

A D I G E S T
OF THE
C R I M I N A L L A W
OF THE
PRESIDENCY OF FORT WILLIAM
AND
G U I D E
TO ALL
CRIMINAL AUTHORITIES THEREIN.

SECOND EDITION.

P A R T I.

COMPILED BY
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No alteration has been made in the division or order of this work. It has simply been corrected in accordance with the laws enacted, or the rules laid down, since the publication of the first edition.

The rules, which apply to either the Lower or the Western Provinces only, have been distinguished by the word *Bengal*, or the letters *L. P.* or *W. P.* respectively. But it was considered unnecessary to mark the quotations from the old series of Nizamut Adawlut Reports by any such notation, since all the cases reported in it were tried in the Calcutta court. To all of these a reference has been made in this work, as they were published on account of some authoritative ruling which they enunciated. But this is not the case with the present series in which all trials are reported without exception ; and it has been deemed requisite therefore to quote only a few selected cases from the latter. The present series is referred to as Reports, in order to distinguish it from the old series cited as N. A. R.

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BOOK I.

OF THE COURTS, THEIR POWERS, RULES OF PRACTICE, AND MODES OF CONDUCTING BUSINESS.

CHAPTER I.

OF THE CONSTITUTION AND GENERAL JURISDICTION OF THE CRIMINAL COURTS.

SECTION I.

OF THE RISE, PROGRESS, AND GRADUAL IMPROVEMENT OF THE PENAL SYSTEM.

1. IN sketching the history of the system of Penal Law, established by the British Government in India, it seems necessary to recount, in the first place, as concisely as possible, the Acts of Parliament, by which the servants of the East India Company were entrusted with a legislative power in their territorial acquisitions; for it is laid down by Blackstone, that “in conquered or ceded countries, that have already laws of their own, the King may indeed alter or change those laws; but till he does actually change them, the ancient laws of the country remain, unless such as are against the law of God, as in the case of an infidel country.” (a)

2. The administration of criminal justice in Bengal, at the period of the East India Company's acquisition of the Dewanny, had been guided for more than two centuries, by the penal system of the Mahomedans, by whom it had been forced upon the Hindoos by right of conquest. The Hindoo criminal code, so long exploded, was indeed but ill-adapted to the actual state of society; and the Hindoos, as well as Mahomedans, had become accustomed to, and acquainted with the ordinances of Mahomed, however defective and irrational, and however much opposed to those principles of law, which respect, alike, the rights of the individual, and the interests of the community. Of this system we shall presently speak more in detail, though in a treatise of this nature it must necessarily occupy but a small space.

3. By the Statute of the 13th George III, chapter 63, section 7, it was enacted, “that the whole civil and military government of the presidency of Fort William, and also the ordering, management, and government, of all the territorial acquisitions and revenues in the kingdoms of Bengal, Behar, and Orissa, shall, during such time as the territorial acquisitions and revenues shall remain in the possession of the United Company, be vested in the Governor General and Council in like manner, to all intents and purposes whatsoever, as the same now are, or at any time heretofore might have been, exercised by the President and Council,

Legislative powers of Government of India.
13th Geo. III.
Chap. 63.

(a) The materials of this sketch have been taken from Harington's Analysis; the Supplement to Colebrooke's Digest of the Regulations; the Fifth Report of the Select Committee of the House of Commons; Mill's History of India; and other works. In some few places the language of these authorities has been adopted, and without the usual acknowledgment implied by inverted commas; as it seemed better to confine these marks to quotations from official documents, which are necessarily frequent.

or Select Committee, in the said kingdoms.” And by section 36 of the same Act, it was declared “lawful for the Governor General and Council, from time to time, to make and issue such rules, ordinances, and regulations, for the good order and civil government of the settlement of Fort William &c., as shall be deemed just and reasonable; such rules, ordinances, and regulations, not being repugnant to the laws of the realm,” subject only to registry and publication in the Supreme Court of Judicature (then first established) “with the consent and approbation of the said Court.”

21st Geo. III.
Chap. 70.

4. By the Act of the 21st George III, chapter 70, the express purpose of which was to explain and amend the Act, from which the above passages are quoted, it was provided in section 23, “that the Governor General and Council shall have power and authority, from time to time, to frame regulations for the provincial courts and councils,” under the restriction, that copies should be transmitted to the Court of Directors and to the Secretary of State, and that they should not be disallowed by His Majesty in Council within two years.

37th Geo. III.
Chap. 142.

5. In 1797, the Regulations, which had been already passed under the powers conferred on the Governor General and Council, by the abovementioned Statutes, were expressly acknowledged by the eighth section of the Act 37th, George III, chapter 142, in the following terms—“And whereas certain regulations for the better administration of justice among the native inhabitants and others, being within the provinces of Bengal, Behar, and Orissa, have been, from time to time, framed by the Governor General in Council in Bengal; and among other regulations, it has been established and declared, as essential to the future prosperity of the British territories in Bengal, that all regulations passed by government, affecting the rights, properties, or persons of the subjects, should be formed into a regular code, and printed, with translations, in the country languages; and that the grounds of every regulation be prefixed to it; and that the courts of justice within the provinces be bound to regulate their decisions by the rules and ordinances which such regulations may contain, whereby the native inhabitants may be made acquainted with the privileges and immunities granted to them by the British Government, and the mode of obtaining speedy redress for any infringement of the same: and whereas it is essential that so wise and salutary a provision should be strictly observed, and that it should not be in the power of the Governor General in Council to neglect or to dispense with the same: be it therefore enacted, that all regulations which shall be issued and framed by the Governor General in Council at Fort William in Bengal, affecting the rights, persons, or property of the natives or of any other individuals who may be amenable to the provincial courts of justice, shall be registered in the judicial department, and formed into a regular code, and printed, with translations in the country languages, and that the grounds of each regulation shall be prefixed to it, and all the provincial courts of judicature shall be, and they are hereby directed to be bound by and to regulate their decisions by such rules and ordinances as shall be contained in the said regulations; and the said Governor General in Council shall annually transmit to the Court of Directors of the East India Company ten copies of such regulations as may be passed in each year, and the same number to the Board of Commissioners for the affairs of India.”

6. The regulation of the Indian Government, to which reference is made in the above section, is Reg. XLI. 1793, the very words of which have been for the most part adopted;

and, as Mr. Harington justly observes, “ supported upon this firm basis, it may be deemed the corner-stone of the system of regulation and polity, for the internal government of these provinces, which was instituted in the year 1793 by Marquis Cornwallis.” Such adoption of the language and principles of the Indian Government may at least be taken to imply, on the part of the British Parliament, a confirmation of the local power of legislation and an approval of the manner in which that power had been exercised.

7. On the renewal of the Company’s Charter in 1813, the regulations were again acknowledged by section 66 of the 53rd George III, chapter 155, which enacts that “ the Court of Directors should annually lay before both houses of Parliament one copy of all the regulations made by their several Governments in India.”

53rd Geo. III.
Chap. 155.

8. Under the 3rd and 4th Wm. IV, chapter 85, the Governor General of India in Council has “ power to make laws and regulations for repealing, amending, or altering, any laws or regulations whatever now in force, or hereafter to be in force, in the territories of India or any part thereof, and to make laws and regulations for all persons, whether British or Native, foreigners or others, and for all courts of justice, whether established by His Majesty’s charters or otherwise, and the jurisdictions thereof, and for all places and things whatsoever within and throughout the whole and every part of the said territories, and for all servants of the said Company within the dominions of princes and states in alliance with the said Company;” except as to matters affecting the prerogative of the Crown, or the authority of Parliament, or the constitution or right of the Company; and subject to the disallowance of any such laws and regulations by the Court of Directors. All such laws and regulations are of the same force as an Act of Parliament; and it is not necessary to register or publish them in any court of justice. It is also provided, that a full, complete, and constantly existing right and power is reserved to Parliament to repeal and alter, at any time, any such law or regulation; and that all the laws and regulations are to be laid before Parliament. (a)

3rd and 4th Wm.
IV. Chap. 85.

9. Lastly the Statute 16th and 17th Vict. chap. 95, entitled an Act to provide for the Government of India, alters in some respects the constitution of the legislative council of India and defines what shall be a quorum of that body; but interferes with its powers no further than to enact that the assent of the Governor General shall be essential to the validity of all laws made by the Council, and that no such law shall be invalid by reason only that it affects any royal prerogative, provided it shall have received the previous sanction of the crown.

16th and 17th
Vic. Chap. 95.

10. Such are the legislative powers which have been at various times committed by Parliament to the Indian Government. We proceed now to trace the steps, by which the penal system now in force has advanced.

11. On the Company’s first acquisition of the Dewanny, it was deemed advisable to interfere but little with the existing system. Instead of abrogating the Mahomedan criminal law, substituting a new code founded on European experience, and providing new Courts with progressive degrees of power, in which the fear of detection stimulates inertness and

Penal system of
Indian Govern-
ment, rise, pro-
gress, and gradual
improvements of.

(a) Acts of Parliament, expressly relating to India, are binding on magistrates of the Company’s criminal courts, although no Act of the local legislature has been passed for their promulgation. C. O. No. 50 of vol. 4.

1765.

overawes injustice ; instead of immediately subverting the existing system, and destroying the old establishments, because they were not based on the principles familiar to the conquerors, or because their functions were ill discharged ; it was wisely determined to introduce improvements with caution and due circumspection. The administration of criminal justice was therefore left to the tribunals previously instituted. Those entrusted with the duties, which are now within the cognizance of our judicial authorities, are thus enumerated in the report of the committee of circuit :—" The Nazim, as Supreme Magistrate, presides personally in the trial of capital offenders ;— the deputy of the Nazim takes cognizance of quarrels, frays, and abusive names ;—the Foujdar is the officer of police, the judge of all crimes not capital ; the proofs of these last are taken before him, and reported to the Nazim for his judgment and sentence upon them ;—the Mohtesib has cognizance of drunkenness and of the vending of spirituous liquors and intoxicating drugs, and the examination of false weights and measures ;—and the Cotwal is the peace-officer of the night, dependent on the Foujdaree."

12. But it would appear that the officers here enumerated were confined to the capital ; for beyond its precincts, the zumcendar, who was originally the chief fiscal officer of a district, exercised both a civil and a criminal jurisdiction almost supreme within the territory over which he was appointed to preside. The minor offences he visited with fines, imprisonment, or corporal punishment, according to his individual pleasure or sense of justice ; and even in capital cases he was under no further restraint than that of reporting the circumstances to the Nazim before proceeding to execution. The government but rarely interfered with his decisions. Thus it ever is with despotic governments ; they do not interpose between their officers and their subjects ; they do not understand the right of the individual as opposed to the general order of the state ; their agents are entrusted with unlimited powers, and in the exercise of them they are left unrestrained. The difference between a despotic and a just government lies in this, that the one revenges, the other punishes ; the one asserts its power with passion, the other calmly vindicates its authority ; the former, unembarrassed with scruples, is content to believe that the real offender is among those who suffer ; the latter is ever filled with a tender apprehension lest the safety of the innocent should be endangered, and lest the powers appointed to protect the people, should be perverted to oppress them.

13. But even if the institutions of the native government had been in themselves excellent, it would yet be no cause for wonder that the administration of justice ceased at a time, when the government of the country underwent a total change, when the Nazim was left without power to maintain the authority of his tribunals. The best instruments may be applied to the vilest purposes ; and as an establishment, however good the principles on which it is founded, must fall to the ground, if the check of supervision is neglected in practice, so institutions, which have been perverted to accomplish only evil, may be capable of producing much good, if the conduct of the ministerial officers is attentively and fitly inspected.

14. The British Government therefore commenced by providing means for superintending the native tribunals. In August 1769, certain servants of the Company, under the title of supervisors, were stationed in appropriate districts throughout the country with this intent ; and in the next year two councils, with authority over the supervisors, were stationed

one at Moorshedabad, and another at Patna. In 1772 additional experience allowed the Government to create new courts, and to furnish them with certain rules, which were drawn up by the committee of circuit, and adopted by the President and Council on the 21st August of that year. In the report which accompanied these regulations, the committee observed—"we have confined ourselves, with a scrupulous exactness, to the constitutional forms of judicature already established in this province, which are not only such as we think in themselves best calculated for expediting the course of justice, but such as are best adapted to the understanding of the people; where we shall appear to have deviated, in any respect, from the known forms, our intention has been to recur to the original principles, and to give them that efficacy, of which they were deprived by venal and arbitrary innovations, by partial immunities granted as a relief against the general and allowed abuse of authority, or by some radical defect in the constitution of the courts in being." By this scheme a court of criminal judicature was established in each district under the denomination of Foujdaree Adawlut, in which a Kazeer and Mooftee, with the assistance of two Moulavies, as expounders of the law, were appointed to hold "all trials of murder, robbery, and theft, and all other felonies; forgery, perjury, and all sorts of frauds and misdemeanors, assaults, frays, quarrels, adultery, and every other breach of the peace, or violent invasion of property;" and it was also declared to be the duty of the Collector of the district (he being a covenanted servant of the Company) "to attend to the proceedings of this court so far as to see that all necessary evidences are summoned and examined; that due weight is allowed to their testimony; and that the decision passed is fair and impartial according to the proof exhibited in the course of trial; and that no causes be heard or determined but in the open court regularly assembled." A separate and superior court of criminal jurisdiction was at the same time established at Moorshedabad, under the designation of Nizamut Sudder Adawlut, in which was to preside, by the title of daroga, a chief officer, appointed on the part of the Nazim, assisted by the chief kazeer, the chief mooftee, and three capable moulavies whose duty it was declared to be "to revise all the proceedings of the foujdaree adawlut; and in capital cases, by signifying their approbation or disapprobation thereof, with their reasons at large, to prepare the sentence for the warrant of the Nazim." A control over the proceedings of this court, similar to that which the collectors of revenue were empowered to exercise over the provincial courts, was vested in the committee of revenue at Moorshedabad, and the object of such control was stated to be "that the Company's administration, in character of King's Dewan, may be satisfied, that the degrees of justice, on which the welfare and safety of the country so materially depend, are not injured or perverted by the effects of partiality or corruption."

15. Certain rules were supplied for the guidance of these courts; the collector was directed to keep a box, under his own key, at the door of the cutcherry for the reception of petitions; complete records were to be kept by the foujdaree adawluts, and transmitted to the superior courts twice every month; the collector also was to keep an abstract register of all the proceedings of that court, to be transmitted in like manner; the authority of the foujdaree adawlut was to extend to corporal punishment, imprisonment, sentencing to the roads and fines, but not to the life of the criminal; in capital cases the trial was to be forwarded

to the Nizamut Adawlut, and ultimately to be laid before the Nazim ; persons guilty of misdemeanors, whose rank, caste, or station in life was thought to exempt them from corporal punishment, were made liable to fines ; but such fines if above one hundred rupees were not to be enforced by the inferior courts ; forfeiture and confiscation of the property of felons was to depend on the Nizamut Adawlut. Stringent penalties were enacted against dacoits ; and threats of dismissal or fines and promises of rewards were held forth to the thanadars and paiks.

16. By these arrangements, it will be observed, the judicial administration was alone affected ; the law itself remained the same, with the exception of an additional and more severe provision respecting dacoity ; and with the system of police no interference was attempted.

1773.

17. In the following year we find it a matter of consideration with the President and Council whether the decree of the Nizamut Adawlut, after having received the confirmation of the Nazim, should be carried into execution precisely in the terms of his warrant ; or whether the Government should interfere in adding to, or commuting, the punishment, in cases wherein it appeared inadequate to the crime or ineffectual as a check. And the result was the appointment of the daroga of the Nizamut Adawlut, which court had previously been removed to Calcutta, “ to affix the seal of the Nazim, and the signature on his behalf to warrants issued for the execution of sentences approved by the court,” and a power vested in the President “ to superintend him in the exercise of this office, as well in revising sentences of the Adawlut, as in passing the warrants and affixing the seal.” However beneficial the control over the administration of criminal justice thus entrusted to the President, a short experience proved that it imposed a labor and involved a responsibility, which it was inconvenient to him to sustain ; and consequently, in October 1775, the Nizamut Adawlut was removed back to Moorshedabad, and the uncontrolled administration of criminal justice was confided to the Naib Nazim, by whom foudars, assisted by persons versed in the Mahomedan law, were appointed to superintend the criminal courts in the several districts, and to apprehend and bring to trial offenders against the public peace.

1775.

Police, 1774.

18. In the meanwhile, April 1774, the police establishment had been remodelled by Mr. Hastings with the concurrence of his Council. The collectors and aumils had been acting as magistrates, but the want of an efficient police had thus early shown itself in the “ increased confidence of the dacoits,” and in the difficulty with which Government obtained “ intelligence of such events as related to the peace of the country.” These evils were ascribed by Mr. Hastings to the abolition of the foudaree jurisdiction of the zumeendars ; to the resumption of the chakeran land, and the employment by the farmers of the servants, allowed to them by Government solely for the business of their collections ; and to the farming system, which removed the claim on the zumeendars formerly possessed by the public from immemorial usage to the restitution of all damages and losses sustained from robbers. The remedies adopted for the removal of these disorders were that thanadars were appointed to the fourteen districts, into which Bengal was divided, for the various purposes of police ; that the landholders and officers of the collections were enjoined to afford them all possible assistance in the discharge of their duties ; that the land servants allowed for their respective

districts were placed under the absolute command of the foudars; that the chakeran lands were again applied to their original design; that the foudars were enjoined to assist each other in their respective jurisdictions; that an office for the superintendence of the foudars was established under the control of the President; that the landholders were made responsible for losses sustained by their neglect to assist the foudars; and that all persons convicted of abetting or conniving at the practices of robbers were to be adjudged equally criminal with them, and to be punished by death.

19. On the 6th April 1781, it was declared that this system had by experience been found not to produce the good effects intended by the institution; the general establishments therefore both of the foudars and thanadars were abolished by a resolution of the Governor General and Council; and the English judges of the several civil courts, being Company's covenanted servants, "were invested with the power, as magistrates, of apprehending dacoits and persons charged with the commission of any crimes or acts of violence, within their respective jurisdictions."

1781.

20. They were not however empowered to try or punish such persons; nor to detain them in confinement; but "were to send them immediately to the daroga of the nearest foudaree court with a charge in writing, setting forth the grounds on which they had been apprehended." Provision was at the same time made for cases "where, by especial permission of the Governor General and Council, certain zumeendars might be invested with such part of the police jurisdiction as they formerly exercised under the ancient Mogul government."

21. In such cases, the judge of the Dewanny Adawlut, the daroga of the foudaree court, and the zumeendar, were to exercise a concurrent authority for the apprehension of robbers and all disturbers of the public peace. The better to enable the government to observe the effects of the regulations thus introduced, and to watch over the general administration of criminal justice throughout the provinces, a separate department was established at the presidency, under the immediate control of the Governor General, to receive monthly returns and reports from the judges, zumeendars, and the Nazim; to arrange which, and to maintain "an effectual check on all persons employed in the administration of justice, as well as for such other purposes as his experience might suggest," an officer was appointed to act under the Governor General, with the title of Remembrancer of the Criminal Courts.

22. These provisions proved inadequate; they contained one capital defect; the power of the English magistrates over the zumeendars and other landholders was not only inefficacious in general, and the course of justice therefore weak and uncertain, but "the regulation which vested the apprehension of all offenders in the magistrates without permitting them to interfere in any respect in the trials, gave rise to a new evil. The magistrates being obliged to deliver over to the darogas of the foudaree courts, and to that officer's prison, all parties charged with a breach of the peace however trivial, and a considerable time often elapsing before they were brought to trial, many of the lowest and most indigent classes of people were frequently detained for a long period in confinement, where the length of their sufferings very often more than equalled their demerits."

1787.

23. In June 1787, therefore, a new regulation "for the administration of justice in the criminal courts in Bengal, Behar, and Orissa," was passed by the Governor General in Council; and at the same time the offices of judge, collector, and magistrate, (except in the cities of Dacca, Moorshedabad, and Patna) were united in the same person, but under distinct rules for his guidance in each capacity. By this regulation it was made the duty of the magistrate "to apprehend all murderers, robbers, thieves, house-breakers, or other disturbers of the peace, and to send them to take their trial, accompanied with a written charge in the Persian language, to the nearest foudaree court." He was further "invested with power to hear and determine without any reference to the foudaree courts, all complaints or prosecutions brought before him for petty offences, such as abusive language or calumny, inconsiderable assaults or affrays, and to punish the same when proved by corporal punishment not exceeding 15 ratans, or imprisonment not exceeding the term of 15 days; but in all cases affecting either the life or limbs of the party accused, or subjecting them to a greater punishment than that above specified, the case was to be remitted, as above prescribed, to the nearest criminal court. In the case of groundless and vexatious complaints, the magistrate was authorized to inflict a fine not exceeding 50 or 200 rupees, according to the supposed wealth of the offender, the distinctions being the same as those since preserved in section 8, Regulation IX. 1793. The daroga of the foudaree adawlut was declared to be totally independent of the magistrate, as far as related to the trial of causes, but subject in every respect to the Naib Nazim. Various rules for the guidance of the magistrates and the foudaree courts were at the same time enacted;—all complaints with the orders upon them were to be recorded in the magistrate's office, both in English and Persian, copies of which with the result of each case detailed in a given form were to be sent monthly to the remembrancer of the criminal courts;—the magistrate was not to detain in confinement beyond 2 days any person accused of an offence not within his competency to try;—he was to inspect the jails, which were under the care of the daroga, and to report thereon to the Governor General, "that the necessary representations might be made to the Naib Nazim;"—a report was to be made to government of any landholder committed for trial; and European British subjects were to be committed under certain rules to the Supreme Court. It was declared at the same time that "all Europeans, not British subjects, were equally amenable with the natives to the authority of the magistrate within his own district, and to the foudaree court to which they might be committed." The darogas were directed to transmit to the Naib Nazim copies of their proceedings at large, and to furnish him with various returns regarding the jail and the maal-khana; and they were to deliver to the magistrate, for submission to the Governor General, monthly statements of the cases decided by them, and of the disposal of prisoners committed to them for trial. The officers of the foudaree courts were to be appointed by the Naib Nazim, and were required to hold courts at least three times a week throughout the year. Other provisions were added regarding the establishments allowed for the various courts, and the manner in which the bills for all expences were to be drawn.

24. The power thus vested in the magistrates to take cognizance of petty offences, obviated in some degree the hardship and inconvenience, which had before been experienced

from the necessity of delivering over for trial to the daroga of the foudaree court all parties charged with a breach of the peace however slight, or any other criminal act however trivial in its nature and consequences. But as all crimes of consequence were still exclusively cognizable by the Naib Nazim and his subordinate officers; as the sentences of the Nizamut Adawlut were final and not notified to the Governor General until they had been carried into execution; as the judges and officers of the inferior criminal courts were appointed by the Naib Nazim; and as he possessed an almost exclusive control over those courts and their proceedings; many defects in the Mahomedan law, and abuses in the administration of it, were left unremedied, and placed beyond the control and ameliorating influence of those who were alone willing to suppress them. The Court of Directors had desired in their primary instructions to Lord Cornwallis in 1786, that “the trial and punishment of offenders against the public peace should be left with the established officers of the Mahomedan jurisdiction, who were not to be interfered with beyond what the influence of the British Government might effect through occasional recommendations of forbearance to inflict any punishment of a cruel nature.” But his Lordship found himself compelled very early to bear testimony to the inefficacy of such measures “to prevent, on one hand, the cruel punishments of mutilation, which are frequently inflicted by the Mahomedan law, and on the other to restrain the spirit of corruption, which so generally prevails in native courts, and by which wealthy offenders are generally enabled to purchase impunity for the most atrocious crimes.” In conformity with this opinion, the Governor General in Council determined in December 1790, to introduce an entirely new system, and to take into his own hands the superintendence of the administration of criminal justice throughout the provinces.

25. But before detailing the provisions which introduced this very important change, it seems useful to note the argument from which he deduced, that government held a right legally sanctioned to alter the Mahomedan law: it is clearly stated in a minute by Lord Cornwallis, dated December 1st, 1790, and it is worthy of remark that the framers of the celebrated “Fifth Report,” sanctioned by the House of Commons in 1812, have adopted his Lordship’s opinions, and even the words in which they were expressed. He writes: “With a view to ascertain more particularly the nature and causes of the defects (in the administration of criminal justice), and to collect the necessary information for remedying them, I directed some queries to be stated to the magistrates of the several districts, from their answers to which it will appear that the evils complained of proceed from two obvious causes: first, the gross defects in the Mahomedan law; and secondly, the defects in the constitution of the courts established for the trial of offenders. A provision against the first of these defects cannot otherwise be made than by our correcting such parts of the Mahomedan law as are most evidently contrary to natural justice and the good of society. That this government is competent to such an amendment of that law, as may appear thus essentially necessary, cannot, I think, admit of a doubt; since being entrusted with the government of the country, we must be allowed to exercise the means necessary to the object and end of our appointment; besides that we appear to possess a sufficient legal recognition of the right in question from this, that the alterations made in the established Mahomedan law

Right of Government to alter the Mahomedan law.

of the country by the first code of judicial regulations of 1772, and more particularly that entire alteration, and new and very severe provision therein contained, for the punishment of dacoits, together with the superintendence and control over all the new criminal courts, which the said regulations vested in the Company's covenanted servants, stand both fully submitted to parliament in the sixth report of the committee of secrecy, already quoted, as a discretionary Act of legislation by the President and Council in the year 1772; and yet so far was the parliament from disapproving thereof, or limiting in any respect the authority of our government in India, that with this information before it, and having these reports as the ground work of the law then passed, the Act of the 13th George III, chapter 63, section 7, vests the ordering, management, and government, of all the territorial acquisitions and revenues in the kingdoms of Bengal, Behar, and Orissa, in the Governor General and Council, for such time as the territorial acquisitions and revenue shall remain in the possession of the said Company, in like manner (as the said Act recites), to all intents and purposes whatever, as the same now are, or at any time heretofore might have been, exercised by the President and Council, or select committee, in the said kingdom. And as it was then before the legislature that the President and Council had interposed, and altered the criminal law of the country, such alterations, and all future necessary amendments thereof, appear, by the above clause, to be legally sanctioned and authorized."

26. It is necessary only to add to this that all subsequent Acts of Parliament, which have entrusted to the Government of India renewed or increased powers of enacting laws, have in no way restricted them in amending the Mahomedan criminal law. In the conclusion of the minute quoted above, Lord Cornwallis proposed to introduce four modifications of that law by a formal enactment; first, that the apparent intention of a murderer, and not the manner or instrument of perpetration, should constitute the rule for determining his punishment; secondly, that in all cases of murder the relations of the deceased should be debarred from pardoning the offender, and that the law should be left to take its course without any reference to their wishes upon all persons convicted thereof;—thirdly, that other punishments should be substituted for mutilation; and fourthly, that heinous offenders should be admitted to become witnesses against each other in the manner of king's evidence in England. Three out of the points which he thus brought forward, as those most repugnant to the principles, or inadequate to the ends, of justice, were the same as those, which Mr. Hastings had advanced in 1773, as reasons for that system of interference with the decrees of the Nazim, which he instituted and superintended;—but as they had never been formally abrogated, the Naib Nazim had doubtless considered as of no effect such innovations in practice on the prescribed rules of the Mahomedan law.

27. It seems unnecessary to follow Lord Cornwallis in the observations which he recorded on the second defect above mentioned, viz., the imperfect constitution of the criminal courts, because they must be generally obvious to all, who consider the facilities to a dishonest tampering with justice, and the unavoidable delay between the primary investigation by the police-magistrate and the final sentence by the Naib Nazim, which such a system necessarily produced. The correctness of his conclusion, that "the future control of so important a branch

of Government ought not to be left to the sole discretion of any native, or indeed of any single person whomsoever," is sufficiently apparent. As such control must necessarily be exercised by the Government itself, and as it is "essential for the prevention of crimes, not only that offenders should be deprived of the means of eluding the pursuit of the officers of justice, but that they should be speedily and impartially tried when apprehended," it was determined to create a new machinery. Judges of circuit were appointed to the duties hitherto performed by the foudaree darogas, and the place of the Naib Nazim was supplied by the Governor General and Council.

28. By the regulations passed on the 3rd December 1790, the court of Nizamut Adawlut was again removed from Moorshedabad to Calcutta, the duties of the court being undertaken by the Governor General and the Members of the Supreme Council, assisted by the local cazee of Bengal, Behar and Orissa, and two mufties; and a register was appointed for the conduct of the executive business of the court, the office of the Remembrancer being merged therein. The powers of the court were declared to be those "lately vested in the Naib Nazim;" and their decisions were in all cases to be regulated by the Mahomedan law, except as far as the restrictions passed in accordance with Lord Cornwallis's two first propositions, noted above; but the applicability of the law to the circumstances of the case was to be determined by the cazee-ool coozat and the mufties.

28. Four courts of circuit, superintended respectively by two covenanted civil servants of the Company, and each having a cazee and muftie to assist the judges and to expound the law, as well as an executive officer called the register, were at the same time established for the trial of offences not punishable by the magistrate; and they were directed to hold two general jail deliveries annually at the stations of the several magistrates within their divisions. In cases of acquittal, and of punishment less than death, or imprisonment for life, in which the judges of the court of circuit might approve of the futwa of their law officers they were empowered to pass a final sentence; but in cases of death or perpetual imprisonment, as well as in all cases where the judges might "see cause to disapprove either on the ground of the trial or the futwa," they were required to transmit their proceedings for the final sentence of the Nizamut Adawlut. Rules of practice were at the same time enacted for the various functionaries; in which all the provisions of the preceding regulation of 1787, applicable to the new system, were re-enacted; and further, a regular system of investigation was prescribed to the magistrate and the superior courts in all complaints; the whole of the proceedings being committed to writing. Murder, robbery, theft, and house-breaking were at the same time declared to be unbailable offences; and French subjects were placed on the same footing as European British subjects.

30. The regulation thus enacted continued in force, with a few alterations and additions until 1793. But as the whole was embodied in the regulations published in that year, and still forms a part of the existing code of laws, it is unnecessary to detail here the various improvements which time and experience produced.

31. In December 1792, the police system was entirely remodelled; it was found, that "the clause in the engagements of the landholders, by which they were bound to keep the

Police, 1792.

peace and, in the event of any robbery being committed in their respective estates, to produce both the robbers and the property plundered, had become not only nugatory, but in numerous instances had proved the means of multiplying robberies and other disorders, from the collusion which subsisted between the perpetrators of them, and the police entertained by the landholders." All powers were therefore taken away from the landholders: the country was divided into jurisdictions of about ten coss square; and a daroga with an establishment of officers was appointed to each. The regulation, which introduced this system, was republished, with some slight modifications, in the following year, as part of the permanent code of Bengal, Reg. XXII, 1793; and it is therefore needless to advert further to its provisions in this place.

32. The system of internal administration, thus adopted in 1793, referred only to Bengal, Behar and Orissa. We must therefore briefly advert to the other provinces and portions of territory over which the British rule now extends.

Benares.

33. In the province of Benares, which was ceded to the Company in May 1775, the administration of justice was committed, subject to the control of the zumeendar, to the aumils or native collectors of the revenue, who were guided, in the exercise of this trust, chiefly by unwritten custom. In October 1781, the British Government first interfered in the interior administration of the province, and appointed a chief magistrate to the superintendence of a civil and criminal court, and a cutwalee, or office of police, in the city of Benares. He was authorized to frame rules of practice for these courts, subject to the approbation of the government at Calcutta, to whose authority alone he was subject. In 1788, courts of judicature were established, under the superintendence of native magistrates, in the towns of Ghazeepore, Juanpore, and Mirzapore; and a moolkee (or country foudaree adawlut) was erected with a criminal jurisdiction over the whole province of Benares, with the exception of the city and the three towns above-mentioned. In all these courts (with the exception of cases which had relation to caste or marriage amongst the Hindoos) the futwas were directed to be delivered in conformity to the Mahomedan law, and the resident at Benares was vested by the Governor General in Council with authority to superintend, revise, and sanction their proceedings, except in the case of sentences of a capital nature or inflicting any severe punishment. The resident was likewise authorized to exercise the powers of magistrate throughout the province, with authority to apprehend offenders, and to commit them to the criminal courts for trial. It being deemed objectionable to condemn brahmins to capital punishment within the province, a rule was passed in 1790, declaring all persons of that caste, condemned to death under the Mahomedan law, liable to transportation beyond sea. Certain other special rules regarding brahmins were promulgated; as well as the same amendments of the Mahomedan law as had already been introduced into the lower provinces. These minor reforms had been effected with the consent of the Rajah, who still retained a nominally sovereign authority; but on the 27th October 1794, an agreement was made with him, by virtue of which it was settled that the Governor General in Council should "introduce the same system and rules for the administration of justice, and for the concerns of the revenue, as were, in 1793, established within the provinces of Bengal, Behar, and Orissa;"

and accordingly the same code of criminal law was extended, with little alteration, to the whole province of Benares; courts were constituted on similar principles, and a similar system of police was introduced, by the regulations passed on the 27th March 1795.

34. In November 1801, the Nawab Wuzeer ceded to the Company by treaty certain districts in Oude, which have since been divided into the following zillahs; Moradabad, Bareilly, Etawah, Furruckabad, Cawnpore, Allahabad, and Goruckpore. At first (says the fifth report) “these districts were placed under the superintendence of a Lieutenant Governor and Board of Commissioners, to whom were confided the settlement of the revenue and the formation of a temporary scheme of internal administration, which was intended to continue, till sufficient information should be acquired of the circumstances of the country, to warrant the establishment of a more permanent system. Under this temporary provision, the European civil servants of the Company, acting under the orders of the Lieutenant Governor, and stationed in the districts into which the acquired territory was divided, possessed individually the entire civil authority, officiating as collectors of the revenue and judges and magistrates within their respective limits.” The commissioners were required to assist the government in the formation of regulations; and also “to superintend the administration of the laws over a great extent of country, and over a race of people, unaccustomed to any regular system of order or law, and habituated to commit the utmost excesses of violence and oppression.” The administration thus formed continued however for little more than a year; when, as the objects which the Government had had in view appeared to have been fulfilled, the commission was dissolved; and the Bengal regulations were introduced into the ceded provinces, being republished with such modifications, as the condition of the natives rendered advisable, under date the 24th March 1803.

Ceded Provinces.

35. The district of Bundelcund was ceded to the Company by the Peshwah on the 16th December 1803; and on the 30th of the same month, Dowlut Rao Scindiah ceded “certain territories, forming part of the Dooab, or country situated between the rivers Ganges and Jumna, and on the right bank of the Jumna.” These were divided into the Zillahs of Bundelcund, Panniput, Scharunpore, Allyghur, and Agra, by section 3, Regulation IX. 1804; but Zillah Panniput, which included the city of Delhi, and the territory situated on the right bank of the river Jumna, was afterwards (by section 4, Regulation VIII. 1805) assigned to his majesty Shah Alum, and declared not subject to any of the general laws or regulations of the British Government. During the continuance of the Mahratta war, these provinces were placed under the control of the Commander-in-Chief, Lord Lake, whose orders the civil servants entrusted with the immediate charge of them were directed to obey; but by Regulation IX. 1804 (passed on the 14th December) the Government extended to these provinces the criminal regulations, which had recently been introduced into the ceded districts of Oude and the vicinity, and of which the similar habits of the people rendered little modification necessary.

Conquered provinces.

36. The pergunnahts of Sonk, Sonsa, and Sahar, in Zillah Agra, parts of the conquered provinces (as those ceded by the Peshwah and Scindiah were officially designated), were subsequently given up to the Rajah of Bhurtpore; but were afterwards resumed, and

Sonk, Sonsa, and Sahar.

Goberdhun.

finally annexed to the Company's territories by treaty, dated the 17th April 1805. They were joined to Zillah Agra, and the criminal laws extended to them by Regulation XII, 1806. In the same manner, the pergunnah of Goberdhun, also part of the conquered provinces, was granted to Koour Luchmun Singh, a son of the same Rajah; but was afterwards resumed, and annexed to the district of Agra on the 25th January 1826, by Regulation V. of that year.

Cuttack.

37. On the 17th December 1803, the province of Cuttack, "including Balasore, and the other dependencies of the said province," were ceded to the Company by the Rajah of Berar, Raghojee Bhoonsla; and by Regulation IV. 1804, (passed on the 3rd May) "the regulations for the administration of justice in criminal cases, and for the guidance of magistrates in the provinces of Bengal and Behar, and in the part of the province of Orissa heretofore subject to the dominion of the British Government" were extended thereto. Certain special rules for the administration of the police were passed at the same time, and also in Regulation XIII, 1805; and in the operation of these were included the pergunnahs of Puttespore, Kummardichour, and Bograe, in the Zillah of Midnapore.

Dehra Doon.

Kumaon, &c.

38. The tract of country, called Dehra Doon, was surrendered to the Company by the Rajah of Nepaul on the 15th May 1815; and annexed to the district of Saharunpore by Regulation IV. 1817, passed on the 28th February; by which also it was made subject to the same laws and regulations as the ceded and conquered provinces. But the administration of certain portions of territory, which were ceded by the same treaty, including the province of Kumaon, Jounsar, Bawur, Poondur, and Sundokh, and other small tracts situated between the rivers Jumna and Sutledge, was entrusted to British officers acting under the immediate instructions of the Governor General in Council; and special rules were enacted in Regulation X, 1817 for the administration of justice, and for the appointment by the Governor General in Council of a special commissioner for the trial of persons charged with the commission of heinous offences therein. In 1825 it was declared, that "local circumstances rendered it expedient to transfer the Dehra Doon to the jurisdiction of the commissioner in Kumaon, and also to place under the same authority the pergunnah of Chandnee," which was then attached partly to Moradabad and partly to Saharunpore; and by Regulation XXI, of that year, the provisions of Regulation X, 1817 were declared applicable thereto. By Regulation V, 1829, however, the Dehra Doon was again separated from the jurisdiction of the commissioner in Kumaon, and the provisions of Regulation X, 1817 were declared no longer applicable to it: such parts of the latter regulation also as provided for the appointment of a special commissioner were rescinded: and it was enacted that "the administration of criminal justice in the Dehra Doon, and in the reserved tracts between the Jumna and Sutledge, should thereafter be conducted under such rules and instructions as the Governor General in Council might please to issue for the guidance of the officers to whom it might be entrusted." Finally, by Act X, 1838, the remaining part of Regulation X, 1817 was repealed; and the functionaries of the province of Kumaon were placed under the control and superintendence in criminal cases of the Nizamut Adawlut, who were to exercise it in conformity with the instructions of Government.

39. The pergunnah of Handya was ceded to the Company by the Nawab Wuzeer on the 1st May 1816; and by Regulation XVIII, of that year, passed on the 16th August, it was annexed to the Zillah of Allahabad, and declared subject to the laws and regulations established for the internal administration of that district.

Handya.

40. On the 1st November 1817, the elakah of Khundeh, appertaining to the pergunnah of Mahoba, together with certain villages belonging to the pergunnah of Choorkee, on the right bank of the Jumna, were ceded to the Company by Nana Govind Row, and were in like manner annexed to the district of Bundelcund by Regulation II, 1818, passed on the 31st March.

Khundeh, &c.

41. There remains only to explain the nature of the Mahomedan criminal law, by the principles of which, except in so far as they have been expressly rejected or amended by the regulations of Government, the criminal courts established by the Company are required to regulate their decisions. The elements of this law are taken from the Koran; but there are so few passages therein which are applicable to ordinary cases, that the administrators of the law are obliged to have recourse to numerous commentators, as well as to the soonnut, or rules of conduct, deduced from traditions of the oral precepts, actions, and decisions of the prophet.(b) The two great sects of Mahomedans, the Shiya and Soonies, frequently differ both in interpreting the Koran, and in admitting or rejecting the traditions; but the authoritative writings of Aboo Huneefah, and his two disciples, Aboo Yoosuf and Imam Mahommed, who were Soonies, govern all judicial decisions in India. If a difference of opinion exists between these authorities, judgment is to be given according to the decision in which the master and one of his disciples agree; or if both the disciples dissent from their master, according to that which appears most consonant to reason, or the practice of modern days, or founded on the best authority.* In judicial decrees however the doctrine of Aboo Yoosuf is considered more sound than that of his fellow disciple. When no precedent can be found, the Mahomedan judge is directed to abide by the decisions of subsequent lawyers; but if these also fail to afford a direct solution of any legal question, it is deemed not improper to resort to judgment, analogy, and reason.(c) The principles of penal justice comprised in the Mahomedan code are classed under three heads, viz. 1st, Kisas, or retaliation, including diyut or the price of blood; 2nd, Hoodood, or prescribed penalties; 3rd, Tazcer and Seasut, or discretionary correction and punishment. Under the

criminal law.

* In trials for

Reg. IX. 1793, sect. 50.

(b) From the Atlantic to the Ganges, the Koran is acknowledged as the fundamental code, not only of theology, but of civil and criminal jurisprudence; and the laws, which regulate the actions and the property of mankind, are guarded by the infallible and immutable sanction of the will of God. This religious servitude is attended with some practical disadvantage; the illiterate legislator had been often misled by his own prejudices and those of his country; and the institutions of the Arabian desert may be ill adapted to the wealth and numbers of Ispahan and Constantinople. On these occasions, the Cadi respectfully places on his head the holy volume, and substitutes a dexterous interpretation more apposite to the principles of equity, and the manners and policy of the times.—*Gibbon's Decline and Fall*, Chap. 50.

(c) It would be foreign to the nature of this sketch to notice the various oriental works on jurisprudence, which are esteemed by the lawyers, and which govern judicial decisions in India; but the reader, desirous of obtaining information regarding them, is referred to Harington's Analysis, to which I am indebted for the whole of this account of Mahomedan

first head are included offences against the person (called jinayat) as wounding, homicide, and murder. Under the second are ranged robbery (sarika-i-kobra), theft (sarika-i-soghra), drinking wine (shoorb), adultery (zina), and slander of the same (kuzuf). And the third head comprises all crimes not expressly falling within the laws of Kisas and Hud, as well as such as, though comprehended within the general provisions of those laws, are specially excepted from the operation of them by some doubt, or legal defect (shoobah.) The offences, which fall under the heads of Kisas and Hoodood will be noticed hereafter in their proper places; but the principles of Tazeer and Seasut are of a more general nature, and it is more convenient to note here their general provisions.

Tazeer and Seasut.

42. Tazeer, in its primitive sense means prohibition or restriction, and is legally defined to be an infliction (akoobut), undetermined by law, on account of the right of God, as well as for the rights of individuals; or, in other words, for the ends of public, as well as private justice; and it is declared to be incurred by any offence, whether of word or deed, not subject to a specific legal penalty. Seasut, literally protection, is a word used to express the exemplary punishment, extending even to death which may be considered necessary to protect the community from atrocious and irreclaimable offenders. These terms include both objects proposed to be effected by punishment, correction and discipline; individuals are punished and reformed; others are deterred from committing the like offence, and the well-being of the community is improved.

Discretionary
punishment.

43. In the case of offences against the community, the evidence of the prosecutor is admissible, or the offender may be brought to trial and punishment without any complaint from the party injured; but the judge alone is capable of remitting the punishment incurred. But in the case of offences against individuals, the plaintiff must himself or by deputy conduct the prosecution; and, though incompetent to bear testimony in his own cause, is at liberty to forgive the offence. In cases of the latter description, absent witnesses may appoint persons to give evidence for them; or, in defect of proof, the accused party may be put upon his oath. Tazeer, though allowed as a private right, cannot be inflicted without a judicial sentence; and though, for the full legal conviction of a Mahomedan, the evidence of witnesses of any other religious persuasion is not strictly admissible; nor of women, if the prosecution be of a public nature; yet Tazeer and Seasut may in all cases be inflicted upon strong presumption, whether arising from the credible testimony of men, or women, of whatever religion, or from circumstances which warrant a violent presumption of guilt, as well as upon the confession of the accused. And it is expressly declared that a conviction for Tazeer may be founded upon the depositions of the prosecutor and one credible male witness, in public cases; or in those of a private nature, upon the testimony of two men, or one man and two women. The punishments, which may be awarded upon a conviction for Tazeer, include private and public reprimands, and exposure (tusheer); a temporary sequestration of property, stripes, imprisonment, and even capital punishment, according to the rank and situation of the offender, or the nature of the offence. As regards capital punishment, however, although some authorities have recognized, in abstract terms, the

right of the ruling power to extirpate evil-doers generally, yet it would appear that strictly it can be awarded only in cases of murder.*

* N. A. R. vol. 2,
page 418.

44. The general doctrine of discretionary punishment has been clearly set forth in the preamble to Regulation LIII. 1803; and it will be fit to cite the passage at length. "The Mahomedan law vests in the sovereign and his delegates the power of sentencing criminals to suffer discretionary punishment (under the legal denominations of Tazeer, Acoobut, and Seasut) in three cases. First, in the case of offences for which no specific penalty, of Hud or Kisas, has been provided by the law; being for the most part offences not of a heinous nature, the punishment of which is left discretionary, below the measure of the specific penalties, for the correction and amendment of the offender. Secondly, for crimes within the specific provisions of Hud and Kisas; when the proof of the commission of such crimes may not be such as the law requires for a judgment of the specific penalties, though sufficient to establish a strong presumption of guilt; or although the proof be such as is required for a sentence of Hud or Kisas, when such sentence is barred by a remission of the claim to retaliations in cases of Kisas; or by any of the special exceptions and scrupulous distinctions, which (under the general denomination of shoobah) are considered by the prevalent authorities of Mahomedan law to bar a judgment for the specific penalties of that law. Thirdly, for heinous crimes in a high degree injurious to society; and particularly for repeated offences of this description; which, for the ends of public justice (as expressed by the term Seasut) may appear to require exemplary punishment beyond the prescribed penalties; and with respect to crimes of this description, an unlimited discretion, extending to capital punishment, is admitted to have been left by the Mahomedan law to the sovereign authority of every country in which that law prevails, as well as to its judiciary delegates." Such being one of the leading principles of the law, the administration of it necessarily became arbitrary and uncertain, when committed to inefficient officers. The amount of injury suffered doubtless differs considerably in cases, which fall under the same denomination; and therefore it is impossible accurately to define each particular offence, and to appoint a specific punishment for every crime; but there are few individuals, and rarely to be found, to whom so wide a latitude in meting punishment can be entrusted, as is given by the Mahomedan law; and still smaller must be the number of those, whose minds are able to contract to the pointless intricacies and uncertain provisions of that code, and at the same time to expand to the noble duties of the judge and the great ends of criminal justice. And hence it was observed "in the adjudication of punishments under the discretion thus allowed, that the futwas of the Mahomedan law officers of the criminal courts were often governed by a consideration of the degree of proof against the party accused, rather than the degree of guilt, and criminality of the act, established against him; and the penalties awarded by them, in such cases, were either adjudged on insufficient proof of guilt, or were inadequate to the heinousness of the offence of which the prisoner was convicted." The law was amended in these points by the regulation from which these passages are quoted.

45. In the remaining pages of this work are detailed the provisions of the law now extant. To detail the various alterations and improvements, which experience has gradually

introduced since the first formation of a code of law in 1793, would swell the bulk of this volume to an inconvenient size; and the advantages to the student would not, perhaps, compensate the practical man for the impediments, which such a course would raise to that facility for reference so much to be desiderated.

SECTION II.

OF THE REGULATIONS.

Principles on which
the regulations are
framed.

46. "It is essential," says the preamble to Regulation XLI. 1793, "to the future prosperity of the British territories in India, that all regulations which may be passed affecting in any respects the rights, persons, or property of their subjects, should be formed into a regular code, and printed with translations in the country languages; that the grounds on which each regulation may be enacted, should be prefixed to it; and that the courts of justice should be bound to regulate their decisions by the rules and ordinances which those regulations may contain. A code of regulations framed upon the above principles will enable individuals to render themselves acquainted with the laws upon which the security of the many inestimable privileges and immunities granted to them by the British government depends, and the mode of obtaining speedy redress against every infringement of them; the courts of justice will be able to apply the regulations according to their true intent and import; future administrations will have the means of judging how far regulations have been productive of the desired effect, and, when necessary, to modify or alter them as from experience may be found advisable; new regulations will not be made, nor those which may exist be repealed, without due deliberation; and the causes of the future decline or prosperity of these provinces will always be traceable in the code to their source." In furtherance of these principles certain rules were passed, in accordance with which the regulations of government are framed and translated; it would however be impertinent to give them a place in a work, which regards the administration rather than the enactment of laws.

Courts to be guided
by them alone.

47. The civil and criminal courts of justice are to be guided in their proceedings and decisions by the regulations framed and transmitted to them by government, as directed in this regulation, and by no other. (a) *Beng. Reg. XLI. 1793, sect. 13. Ben. Reg. I. 1795, sect. 4. Ced. Prov. Reg. I. 1803, sect. 13.*

(a) "Penal statutes must be construed strictly." *Blackstone*.—"The judge is not to judge according to his own discretion only; he must strictly adhere to the letter of the law; and no constructive extension can be admitted; and, however criminal an act might in itself be, it would pass unpunished if it were found not to be positively comprehended in some one of the cases provided for by the law. The evil that may arise from the impunity of a crime,—that is an evil, which a new law may instantly stop,—has not by the English laws been considered as of magnitude sufficient to be put in comparison with the danger of breaking through a barrier on which so materially depends the safety of the individual." *De Lolme*.

48. One part of a regulation is to be construed by another, so that the whole may stand. (b) *Beng. Reg. XLI. 1793, sect. 19. Ben. Reg. I. 1795, sect. 4. Ced. Prov. Reg. I. 1803, sect. 19.*

Construction by itself.

49. As regards the question how far the meaning of the words of an enactment is to be construed by the statements of its preamble, there is a long argument in Reports *L. P. 1852*, page 613. It seems to have been decided that, where the words of the enacting portion of the law are precise and unambiguous, it is unnecessary to have recourse to the preamble: and that it is sufficient to expound the words in their natural and ordinary sense. *Sententia absoluta expositore non indiget.*

50. If a regulation is passed differing from a former regulation, either wholly or partially, the new regulation is to be considered as a virtual repeal of the old one, as far as it may differ from the latter, provided that the new regulation be couched in negative terms, or by its matter necessarily imply a negative. *Beng. Reg. XLI. 1793, sect. 20. Ben. Reg. I. 1795, sect. 4. Ced. Prov. Reg. I. 1803, sect. 20.*

New regulation differing from old.

51. If a regulation, that rescinds another regulation, is itself afterwards rescinded, the original regulation is to be considered as revived without any formal declaration to that purpose. *Beng. Reg. XLI. 1793, sect. 21. Ben. Reg. I. 1795, sect. 4. Ced. Prov. Reg. I. 1803, sect. 21.*

Repealed regulation revived.

52. A regulation is to be considered as promulgated from the date of the receipt of the English copy. *C. O. No. 137 of vol. 2.*

Promulgation.

53. The date on which a regulation is received in an office should invariably be recorded thereon, the note being attested by the official signature of the presiding officer. *Const. No. 566.*

54. On receipt of translations of the regulations in the country languages, judges and magistrates are to cause them to be publicly read in their cutcherries; and to require the native pleaders of their respective courts to take copies of the translations of any regulations, which relate, directly or indirectly, to the administration of civil justice. *Ced. Prov. Reg. VIII. 1805, sect. 31. Beng. and Ben. Reg. XI. 1806, sect. 12.*

Translations to be read publicly.

55. No regulation is considered to extend, either wholly or in part, to the province of Benares, unless the title to the regulation, or the regulation itself, or some other regulation, declares the whole or a part of it to extend to that province. *Reg. I. 1795, sect. 4.*

Instance of extent of application.

56. In a case of supervenient insanity after the commission of murder by the prisoner while sane, the court did not think fit to apply the rule contained in *Reg. IV. 1822*, which would have been disadvantageous to the prisoner, as the offence was committed long prior to that enactment. *N. A. R. vol. 2, page 189.*

Examples of construction.

57. The court would not apply the provisions of *Reg. IV. 1822* (unfavorable to the prisoner) to an offence committed subsequently to the date of its being in force, but prior to

the probable date of its receipt at the place where the offence was committed. N. A. R. vol. 2, page 233.

58. Held that the rule contained in section 7, Reg. XII. 1825,—which declared that the inadequacy of a prescribed sentence was not a legitimate ground for referring the case to the higher court, and was so far in favour of a prisoner,—was applicable to the case of a prisoner whose offence was committed prior to the promulgation of that enactment. N. A. R. vol. 3, page 107.

59. An inferior court may decide a case, which by the enactments in force at the time of the apprehension of the prisoner is within its competency, although, under the laws existing at the time of the commission of the offence, it must have referred the case to a superior court,—provided the new enactment does not enhance the punishment. Const. Nos. 594 and 298. N. A. R. vol. 3, page 107.

Sentences to be regulated by Mahomedan law.

60. The sentences of the courts are to be regulated by the Mahomedan law, excepting in cases in which a deviation from it is expressly directed by any regulation. *Beng. Reg. IX. 1793, sect. 54 and 74. Ced. Prov. Reg. VII. 1803, sect. 23: and Reg. VIII. 1803, sect. 9.*

Unless any one not a Mahomedan claims exception.

61. But any person, not professing the Mahomedan faith, when brought to trial on commitment for an offence cognizable under the general regulations, may claim to be exempted from trial under the provisions of the Mahomedan criminal code. In such case the prisoner is to be tried with the assistance of a punchayet, assessors, or a jury, and the futwa of the law-officer is to be dispensed with. Reg. VI. 1832. sect. 5.*

* *v. Infra, Section of sessions.*

law
id by re-

62. In cases where a stated penalty is prescribed for an offence, as well by the regulations as by the Mahomedan law, the provisions of the latter are superseded. N. A. R. vol. 1, page 262.

Public officers
are
new

or circumstances
require.

63. If in any case not provided for by the regulations, the Mahomedan law appears repugnant to justice, the court is notwithstanding to adhere thereto, if in favor of the prisoner, in the case before them; or, if against the prisoner, to mitigate the punishment or recommend a pardon; and at the same time to propose a new regulation to provide against a recurrence of the case. *Beng. and Ben. Reg. IV. 1797, sect. 4. Ced. Prov. Reg. VIII. 1803, sect. 11.*

64. The Court is to propose a regulation to fix and declare the specific punishment of any crime of magnitude, which may be found not to have been specifically provided for, either by the Mahomedan law or by the regulations, and which may appear to call for an express denunciation of the penalty to be incurred by committing the same. Reg. LIII 1803, sect. 7, cl. 3.

65. Magistrates, session judges, and judges of the Nizamut Adawlut are respectively empowered to propose regulations regarding any matters coming within their cognizance. They are to be drafted in the form and agreeably to the rules prescribed in Reg. XLI. 1793, and submitted through the intervening courts, with their remarks thereon, to the Governor General in Council, who is to reject, or adopt them, or to pass such other regulation as may appear to him proper. *Beng. Reg. XX. 1793. Ben. Reg. XXIX. 1795. Ced. Prov. Reg. IX. 1803.*

CHAPTER II.

OF THE NATURE OF CRIMES, OF PERSONS CAPABLE OF COMMITTING CRIMES, AND OF PRINCIPALS AND ACCESSARIES.

70. It is the custom to preface works on criminal law with remarks on the nature of crimes,—on persons capable of committing crimes,—and on principals and accessaries. I desire to follow this example; but on these subjects neither the Mahomedan law, nor the regulations, contain any full and precise rules; and I have therefore deemed it best, in treating thereof, to supply first the principles of English law as laid down by Blackstone, Russell, &c., secondly the corresponding definitions of Mahomedan law given in the Hedaya, and lastly what is to be found in the regulations. It is not indeed easy to distinguish the principles on which the rules of Mahomedan law have been founded, or to reconcile the differences which occur therein. The cause is evident; the law-giver adapted each ordinance to the peculiar case, which called for its enunciation; and the law-administrators habitually deduced general precepts from a casual decision or dictum of the prophet or other acknowledged authority; comprehensive laws, regarding the species and genera of crimes, would ill grow from individual circumstances; and commentators and magistrates have found ample exercise for their ingenuity and sophistry in applying the isolated sayings of the koran, and in resolving opponent doctrines into rules of general application. From this disregard of generic distinctions ensues a defect in classification; and without accurate classification definitions can never be framed.

SECTION I.

OF THE NATURE OF CRIMES.

**English
Law.**
General defini-
tion.

71. The general definition of a crime is "an act committed or omitted in violation of a public law, either forbidding or commanding it." In the language of the English law offences are, with few exceptions, divided into two classes, felonies and misdemeanors. *Felony* is defined to be an offence which occasions a total forfeiture of either lands or goods, or both, at the common law; and to which capital or other punishment *may be* superadded according to the degree of guilt. The word *misdemeanor*, in its usual acceptation, is applied to all those crimes and offences, for which the law has not provided a particular name; and they may be punished according to the degree of the offence by fine or imprisonment, or both. A misdemeanor is in truth any crime less than a felony; and the term comprehends all indictable offences, which do not amount to felony; as perjury, battery, libels, conspiracies, and public nuisances. So long as an act rests in bare intention it is not punishable; but immediately when an act is done, the law judges not only of the act done, but of the intent with which it is done; and if accompanied with an unlawful and malicious intent, though the act itself would otherwise have been innocent, the intent being criminal, the act becomes criminal and punishable. Thus an attempt to commit a felony is, in many cases, a misdemeanor; and an attempt to commit even a misdemeanor has been decided in many cases to be itself a misdemeanor. And the mere soliciting another to commit a felony is a sufficient act or attempt to constitute the misdemeanor. All that is necessary is an act charged, and a criminal intention joined to that act.

Misprision of
felony.

72. Misprision of felony is taken for a concealment of felony, or a procuring the concealment thereof; and silently to observe the commission of a felony, without using any endeavours to apprehend the offender, is a misprision, a man being bound to discover the crime of another to a magistrate with all possible expedition. If this offence were accompanied with some degree of maintenance given to the felon, the party committing it might be liable as an accessory after the fact.

Distinction be-
tween public and
private wrongs.

73. The distinction of public wrongs from private, of crimes and misdemeanors from civil injuries, seems principally to consist in this: that private wrongs, or civil injuries, are an infringement or privation of the civil rights which belong to individuals, considered merely as individuals; public wrongs, or crimes and misdemeanors, are a breach and violation of the public rights and duties, due to the whole community, considered as a community, in its social aggregate capacity. As if I detain a field from another man, to which the law has given him a right, this is a civil injury, and not a crime; for here only the right of an individual is concerned, and it is immaterial to the public which of us is in possession of the land; but treason, murder, and robbery, are properly ranked among crimes; since, beside the injury done to individuals, they strike at the very being of society, which cannot possibly subsist, where actions of this sort are suffered to escape with impunity.

74. The same principles are in a great measure acknowledged by Mahomedan law. Mr. Mill observes, that “in the selection of the acts, which shall be accounted offences, there is great uniformity all over the globe”; but it seems that the Mahomedan code loses sight of the distinctions usually drawn between civil and criminal law, and embraces a range somewhat wider than the English. It considers offences as divided into two classes, those against the law of God, and those against individuals; and declares that the punishment of the former is due to the right of God, of the latter to the right of the individual; that the one cannot be remitted by the act of any individual; while the other may be absolved by the person injured. Indeed in all cases it seems that the conviction and punishment of the offender have at least a negative dependance on the prosecutor; as, for instance, in a case of theft, which is an offence against the right of God, the thief cannot be punished even on his own confession unless the person robbed comes forward to prosecute. But it necessarily follows that the end and purpose of criminal law are forgotten, if a breach and violation of the public rights and duties, due to the whole community, may be forgiven by the individual on whom the injury more immediately falls, or if he alone is permitted to compound the offence which has outraged society in its aggregate capacity. The object of civil law ought to be to restore to a party injured his right if possible, or to give him an equivalent; the object of criminal law should be the prevention and punishment of public wrongs. Again, the Mahomedan law, in assuming to itself the vindication of the rights of God, observes offences, of which an English judge cannot take notice; for every crime does not include an injury, since there are violations of the divine law, which are neither injurious to the public morals, nor prejudicial to an individual.

**Mahomedan
Law.**

General principle.

75. We have already adverted to the three principles of Mahomedan penal justice, viz. retaliation, stated penalties, and discretionary punishment. Under the two first of these heads certain offences are in a measure defined, and declared liable to certain penalties; but under the last, the nature and classification of the act impugned, as well as the measure of punishment proportionate thereto, are left to the discretion of the judge. He must decide according to his sense of justice, equity, and good conscience. The British Government, while instituting courts for the administration of this code, and making “provisions for determining the punishment to be adjudged by those courts in all cases wherein a discretion is left by the Mahomedan law,” has thought proper to place them under but little further general restrictions: in some few cases offences have been defined and penalties prescribed. By clause 7, sect. 2, Reg. LIII. 1803, it is enacted, that—“if the crime of which a prisoner is convicted, and for which he is declared liable to discretionary punishment, shall neither have been specifically provided for by any regulation, nor by any stated penalty in the Mahomedan law; and the judge, before whom the trial may be held, considers the crime to have been established against the prisoner, and deserving of punishment,” he may adjudge punishment within certain limits. So also the jurisdiction of the magistrate is confined, by sect. 19, Reg. IX. 1807, only to those “criminal offences punishable under the Mahomedan law and the regulations;” and he is to adjudge punishment within certain limits; or, if he considers such penalty insufficient for the criminality of the offence, he is to commit the offenders to the sessions.

**Regulation
Law.**

Session Judge.

Magistrate.

If act forbidden
without sanction.

76. It would seem that any act forbidden by the regulations, but for which no punishment is specified, is considered as a misdemeanor, and punishable accordingly at discretion under the general regulations.(a) Const. No. 1305.

What is a punish-
able offence.

77. But the sessions court, unassisted by a Mahomedan law-officer, is incompetent to declare that to be a crime which is not so declared by the regulations. The law professedly administered is the Mahomedan law, amended and modified by the regulations. When the amendments are applicable, there can be no difficulty in disposing of trials; but, in the contrary event, an exposition of the Mahomedan law is necessary to pronounce whether the act of the prisoner is punishable or otherwise. C. O. No. 55 of vol. 3.

SECTION II.

OF PERSONS CAPABLE OF COMMITTING CRIMES.

English
Law.

or defect of will.

78. All the pleas and excuses, which protect the committer of a forbidden act from the punishment which is otherwise annexed thereto, must be founded on the want or defect of will; for without the consent of the will human actions cannot be considered as culpable. To make a complete crime cognizable by human laws, there must be both a will and an act. An overt act, or some open evidence of an intended crime, is necessary in order to demonstrate the depravity of the will, before the man is liable to punishment: and as a vicious will without a vicious act is no civil crime, so on the other hand an unwarrantable act without a vicious will is no crime at all. So that to constitute a crime against human laws, there must be, first, a vicious will; and secondly, an unlawful act consequent upon such vicious will. The cases of want or defect of will seem to be reducible to four heads: 1st, infancy; 2nd, *non compos mentis*; 3rd, subjection to the power of others; 4th, ignorance, chance, and the like.

Infancy.

79. Infants, under the age of discretion, ought not to be punished by any criminal prosecution whatever. But this age of discretion must be regulated as well by the nature of each individual case, as by the strength of the delinquent's understanding and the degree of cunning shown in the perpetration of the offence charged. For one lad of eleven years old may have as much cunning as another of fourteen; and in such cases the maxim is that *malitia supplet aetatem*. Under seven years of age an infant cannot be guilty of felony, for then a felonious discretion is almost an impossibility in nature. On the attainment of fourteen years the criminal actions of infants are subject to the same modes of construction as those of the rest of society;—but between fourteen years and seven, though an infant is *prima facie doli incapax*, and presumed to be unacquainted with guilt, yet this presumption will diminish with the advance of the offender's years, and will depend upon the particular facts

(a) With regard to an act enjoined, this principle was not admitted by all the judges sitting in the case of the zumeendar, who refused to appoint a chokeedar. But two out of three held that where there is a legal obligation, the observance of it may be enforced under the general powers with which judges and magistrates are invested.

and circumstances of his case. The evidence of malice, however, which is to supply age, should be strong and clear beyond all doubt and contradiction; but if it appear that the offender is *doli capax* and can discern between good and evil, he may be convicted and suffer death.

80. It has been considered that there are four kinds of persons who may be said to be non compos. 1st, an idiot; 2nd, a lunatic; 3rd, one made non compos by sickness; 4th, one that is drunk. The difference between the two former lies in this, that an idiot is one who has been a fool or mad from his birth, and never has lucid intervals; while a lunatic has occasional intervals of reason. One who is deaf and dumb from birth is in presumption of law an idiot, and the rather because he has no possibility to understand what is forbidden by law to be done, or under what penalties; but if it appear that he has the use of understanding, as some of that condition discover by signs, then he may be tried and suffer judgment. Persons made non compos mentis by sickness, and lunatics, are excused in criminal cases from such acts as are committed while under the influence of the disorder. With respect to drunkenness, if it be voluntary, it cannot excuse a man from the commission of any crime, but on the contrary must be considered as an aggravation of whatever he does amiss;—yet if a person by the unskilfulness of his physician, or the contrivance of his enemies, eat or drink such a thing as causes phrenzy, he is excused;—and also if the phrenzy has become habitual and fixed, though contracted by the vice and will of the party, yet it puts the man in the same condition as if it were contracted at first involuntarily. In some cases, however, the state of the culprit may be taken into consideration, where premeditation is the principal point to be decided. Generally it seems that though, if there be a total permanent want of reason, or if there be a total temporary want of it, when the offence was committed, the prisoner will be entitled to an acquittal; yet if there be a partial degree of reason, and a competent use of it sufficient to have restrained those passions which produced the crime; if there be thought and design, a faculty to distinguish the nature of actions, to discern the difference between moral good and evil; then, upon the fact of the offence proved, the judgment of the law must take place.

Non compos
mentis.

Idiot.

Lunatic.

One deaf and
dumb from birth.

Non compos from
sickness.

Drunkenness.

General principle.

81. If a man in his sound memory commits a capital offence, and before arraignment for it he becomes mad, he ought not to be arraigned for it; because he is not able to plead to it with that advice and caution that he ought. And if, after he has pleaded, the prisoner becomes mad, he shall not be tried; as he cannot make his defence. If, after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced: and if after judgment he becomes of non-sane memory, execution shall be stayed; for peradventure, says the humanity of the English law, had he been of sound memory, he might have alleged something in stay of judgment or execution.

Proceedings as
to trial and judg-
ment.

82. Persons are excused from those acts which are not done of their own free will, but in subjection to the power of others, and through unavoidable force and compulsion. Though a law is contrary to religion and sound morality, yet obedience to it is sufficient extenuation of civil guilt before the municipal tribunal. In private relations, the principal case, where constraint of a superior is allowed as an excuse for criminal misconduct, is with regard to the matrimonial subjection of the wife to her husband; for neither a child nor a

Subjection to the
power of others, and
compulsion.

Civil power.

Husband and
wife.

servant are excused the commission of any crime, whether capital or not capital, by the command or coercion of the parent or master. A wife shall not suffer punishment for committing theft or burglary, or other civil offences against the laws of society, by the coercion of her husband, or in his company, which the law construes a coercion. But she is punishable, if upon the evidence it appears that she was not under coercion, or acted voluntarily. So also she is guilty of all crimes which, like murder, are *mala in se*, and prohibited by the law of nature. But where the wife is to be considered merely as the servant of the husband, she will not be answerable for his breach of duty, however fatal, though she may be privy to his conduct. In all misdemeanors, and when the wife offends alone, she is responsible for her offence.

Fear of death,
or bodily harm.

83. Threats and menaces, which induce a fear of death or other bodily harm, take away the guilt of many crimes and offences; but then such fear must be just and well-grounded; and the excuse is not admitted in natural offences so declared by the law of God. If a man be violently assaulted, and has no other means of escaping death but by killing an innocent person, such fear and force does not acquit him of murder, for he ought rather to die himself than escape by the murder of an innocent person; but in such a case he may kill the assailant.

Choice between
two evils.

84. Another species of necessity is where a person is compelled to choose between two evils, and chooses the least pernicious of the two. As where a civil officer wounds or kills persons resisting his authority, and preventing him from executing duties which he is bound to perform.

Ignorance or
mistake.

85. The plea or excuse of ignorance applies only to ignorance or mistake of fact, and not to any error in point of law. For ignorance of the municipal law of the kingdom is not allowed to excuse any one that is of the age of discretion, and compos mentis, from its penalties when broken; on the ground that every such person is bound to know the law, and presumed to have that knowledge.(a) If a man, intending to kill a thief or house-breaker in his own house, by mistake kills one of his own family, this is not a criminal action; for here the deed and the will acting separately, there is not that conjunction between them which is necessary to form a criminal act.

Chance or mis-
fortune.

86. If a man commits an unlawful act by misfortune or chance, and not by design, there is a deficiency of will, which exempts from criminality; for here the will does not co-operate with the deed. But he is not excused, if the accidental mischief ensues in the performance of an unlawful act; though even in the latter case the law makes a distinction between an unlawful act, which is in its original nature wrong and mischievous, *malum in se*, and one which is merely *malum prohibitum*; as where any unfortunate accident happens from an unqualified person being in pursuit of game, he is amenable only to the same extent as a man duly qualified.

**Mahomedan
Law.**

General term.

87. The term, *mokulluf*, includes all persons accountable to the law for their actions; and refers particularly to the sane and adult, who alone are subject to the penalties of hudd and kisas.

(a) Ignorantia juris, quod quisque tenetur scire, neminem excusat.

88. It is not always held necessary by the Mahomedan law, that a vicious will and a vicious act should combine in order to make an offence complete ; for a person may be the active, though remote, cause of an injury, either unintentionally and by mere accident ; or by carelessness, obstinacy, or wilful neglect ; or he may occasion an injury passively by an intermediate cause. Here the will may act separately from the deed, or it may sit neuter, neither concurring with the act, nor disagreeing to it ; but the offender is held responsible in his property, because it is deemed just that the person injured should receive compensation, and that the loss should fall on the cause of the injury rather than on any other person. It is however allowed that, if the injury is occasioned by an intermediate cause, the offender is liable to make compensation only when he transgressed in the original action.(a) A want or defect of will however is always considered so far as to mitigate the nature and degree of punishment. In offences against the person it is said, that “an offence is rendered complete by the intention ;(b) and complete punishment (understood by retaliation) is incurred where that exists, but otherwise not ;”—as where a person killed a man believing him to be a jackal, it was held that the offence was of less magnitude than wilful bloodshed, but was “not altogether exempt from criminality.”(c) The pleas, then, for exemption from punishment are confined, first to cases in which there is a defect of understanding, including infancy and non compos mentis ;(d) and secondly, to those in which the action is constrained by some outward force and violence, *i. e.* subjection to the power of others.(e)

Chance or ignorance.

General rule.

(a) The following curious application of this principal is given in the Hedaya, vol. 4, page 359 : “If a water spout, set out from a house over the public road, fall upon any person and kill him, an examination must be made to discover which part of the spout it was that hit the person ; and if it appear that he was struck by the end next the house from which it had projected, no atonement is due from the person who set it up, because with respect to that part he is not a transgressor, since he had placed *that* in his own property ; but if it appear that the deceased was struck by the projecting end, the person who set it up is responsible, because with respect to that part he is a transgressor, as having caused the spout to project over the road without any necessity, since he might to as good purpose have fixed it up so as not to project over the road at all. If, on the other hand, it appears that the deceased was struck by both ends of the spout, the fixer up is responsible for an half of the fine, and the other half drops. If it cannot be discovered which part of the spout struck the deceased, in this case also an half of the fine is due ; for the accident may have happened in either of *two* ways, in one of which the complete fine is due, and in the other nothing whatever, and therefore, in contemplation of *both* circumstances, an *half* is imposed.”

(b) The apparent intention is correctly taken into consideration by the Mahomedan lawyers ; but their fallacious subtleties have adulterated this as others of their wisest provisions ; for in offences against the person it is held that, “as the intention is a thing concealed which we cannot discover but by inference from something affording an argument of it, and as the use of the instrument of homicide affords an argument of it, so the intention may be concluded from the instrument used” ; (Hed. Trans. vol. 4, page 271)—whence it follows that the wilful murderer and the unlucky person who commits accidental homicide meet the same punishment. It will be remembered that the British government early introduced an amendment of this provision.

(c) See also the Section in another place on accidental homicide.

(d) Slavery forms a plea for exemption on the same terms as infancy and lunacy, but it is not thought necessary to refer to it here.

(e) There are many cases in which an offender is exempted from the stated punishment of hudd ; but in such cases he becomes liable to discretionary punishment ; for as Mr. Harington observes, “the fixed penalty is so frequently severe and against the feelings of humanity, that numerous provisions have been made by the legislator for dispensing with or rather evading the law by qualifications, restrictions, and conditions, some one of which so often intervenes as to render the actual infliction of such severe punishment very rare.”

Infants and lunatics are exempt from hudd and kisas; but are liable to other penalties for acts, though not for words.

89. But even in regard to infancy and insanity this exemption saves only from hudd and kisas, i. e. fixed punishment, and retaliation. "The disqualifications in question occasion inhibition with respect to speech, but not with respect to actions; because acts, upon proceeding from the actor, are existent and perceptible, whereas mere words, such as purchase, sale, and so forth, are accounted existent only where they are of lawful force and authority, which depends upon the design of them, a thing which, in the case of infants and lunatics, is not regarded, because of their want of understanding: but if the actions are of such a nature as to induce an effect liable to prevention from the existence of a doubt, such as fixed punishment or retaliation, then infancy and lunacy occasion inhibition; whence it is that infants and lunatics are not liable to fixed punishment or retaliation, since no regard is paid to their design."(*a*)

One infant instigating another to the commission of an offence.

90. "If an infant instigate another infant to kill a man, and the infant so instigated kills the man accordingly, the fine for the man's blood is due from the infant's *akilas* (i. e. responsible relations); because he has actually killed the man, and the malice or error of an infant is one and the same,—that is, a fine is incurred equally in either instance. Nothing whatever is incurred by the infant who instigated the commission of the act, as he is not liable to be taken to account for his words, nothing being cognizable except what is noticed in the law, which pays no regard to the words of such persons. The *akilas*, moreover, having paid the fine, are not at liberty to reimburse themselves from the infant, either at present, or after he shall have attained maturity; for his words were uncognizable on account of a defect in his natural competency."(*b*)

Responsibility if they destroy property.

91. "If a lunatic or an infant destroy anything, they are liable to make a recompense, in order that the right of the owner may be preserved. The ground of this is that destruction occasions responsibility, independent of the intention or design;—as where, for instance, a man's property is destroyed, from being fallen upon by a person walking in his sleep, or from the falling of an inclined wall, after due warning; in which cases the sleeper or owner of the wall are responsible, although they did not design the destruction."(*c*) In the case of *zakat* (i. e. alms) which is not incumbent on infants or maniacs, the law distinguishes those who have lucid intervals. (*d*)

Lucid intervals.

Wilful murder by irresponsible persons.

92. "Wilful murder committed by an infant, lunatic, or a person occasionally insane (*matoua*), is accounted the same as homicide by misadventure, and the fine is due from the *akilas*. *Shafei*, however, says that "wilful murder by those persons comes under the construction of wilful, insomuch that the fine for it is due from the property of the perpetrator, because the act was undoubtedly wilful, as that term applies to any thing done by intention and with design; and retaliation is remitted in this instance solely because persons of the above description are not liable to any corporal infliction; which argument, however, does not apply to their property, whence it is that expiation is required of them." But this opinion of *Shafei* is denied because "will depends upon knowledge, and knowledge depends upon reason, which in a lunatic is altogether wanting, and in an infant is defective. Neither are they

(*a*) Hedaya Trans. vol. 3, page 470.

(*b*) Ibid, vol. 4, page 400.

(*c*) Ibid, vol. 1, page 4.

(*d*) Ibid, vol. 3, page 471.

required to make expiation, because that is performed to cover a crime ; and in the present instance there is no crime to be covered, as they are held incapable of committing a crime.”(a) The law-officers of the Nizamut hold the latter opinion, and say that in cases of homicide, maiming, and wounding, suspicion of temporary derangement is sufficient to bar kisas and diyut, but does not preclude the imprisonment of the offender to prevent danger to society.(b)

93. “ If a murderer, sentenced to suffer kisas, become insane before he has been delivered over by the kazee to the heir of the slain, he is not to be put to death ; and his property is answerable for the fine of blood. If he become insane after he has been condemned, and delivered over by the kazee to the heir of the slain, the latter is at liberty to put him to death, notwithstanding his insanity.”(c)

Supervenient insanity.

94. A person under age is held in law to be incapable of any act by which he may injure himself ; and the same rule applies to lunatics. And it is said in reference to this (in treating of apostacy) that “ a person intoxicated with liquor so as to be deprived of his reason is accounted the same as a lunatic.”(d) But the reason of this is explained elsewhere, as regards apostacy, to be that a person’s belief cannot be ascertained during drunkenness.—A man is not to be condemned on his confession, made during intoxication, of a crime the punishment of which is purely a right of God ; but he is liable to punishment, if he so confesses to an offence the penalty of which is also a right of the individual, “ because a state of drunkenness is here the same as a state of sobriety for the sake of inflicting a penalty.”(e)—But the Mahomedan law does not admit drunkenness to be pleaded as an excuse for crimes committed under its influence ;(f) indeed intoxication is itself an offence liable to corporal punishment by hudd.

Such cannot injure themselves.

Intoxication.

95. “ A person becomes adult on attaining puberty, which is established by the ability of the organs of generation to perform their natural functions, which are then first acquired ; or on the completion of his eighteenth year if a boy, or her seventeenth year if a girl.(g) This is the opinion of Haneefah ; but the two disciples maintain that upon either a boy or a girl completing the fifteenth year they are to be declared adult. Others say that nineteen years are required in the case of a boy. The earliest period of puberty with respect to a boy is twelve years, and with respect to a girl nine years. When a boy or girl approaches the age of puberty, and they declare themselves adult, their declaration must be credited, and they become subject to all the rules affecting adults ; because the attainment of puberty is a matter, which can only be ascertained by their testimony ; and consequently, when they notify it, their notification must be credited.”(h)

The period of attaining majority.

96. The Mahomedan law also lays a civil inhibition on persons who have shown any species of mental depravity, not occasioned by a defect of understanding, as the practice of extravagance ; and on an insolvent debtor ;—but these form no exemptions in matters within the province of criminal law.

Weakness of mind.

(a) Hed. Trans. vol. 4, page 851.

(d) Hed. Trans. vol. 3, page 246.

(b) N. A. R. vol. 1, page 357.

(e) Ibid vol. 2, page 57.

(c) Harington’s analysis, vol. 1, page 264.

(f) N. A. R. vol. 1, page 247, and vol. 3 page 6.

(g) The law officers appear to look solely to the age of the person without regard to his physical qualifications. See especially N. A. R. vol. 3, page 87.

(h) Hed. Trans. vol. 3, page 482.

Compulsion.

97. "Compulsion applies to a case where the compeller has it in his power to execute what he threatens. The reason of this is, that compulsion implies an act which men exercise upon others, and in consequence of which the will of the other is set at nought, at the same time that his power of action still remains. Now this characteristic does not exist unless the person compelled be put in fear, and apprehend that if he do not perform what the compeller desires, the threatened evil will fall upon him ; and this fear and apprehension cannot take place unless the compeller be possessed of power to carry his menace into execution ; and unless it appear most probable to the person compelled that the compeller will execute what he has threatened, so as to force and constrain him to the performance of the act which the compeller requires of him. Compulsion, however, is not established by a single blow, or a single day's imprisonment, unless the compelled be a person of rank, to whom such a degree of beating or confinement would appear detrimental or disgraceful ; for with respect to such a person compulsion is established by this degree of violence, as by it his volition is destroyed."(*a*)

Destruction of property by compulsion.

98. "If one person compel another to destroy the property of a third person, it is lawful for the person so compelled to destroy that property ; because the property of another is made lawful to us in all cases of necessity, such as in a situation of famine(*b*) for instance.

Murder by compulsion.

In such case compensation will be due from the compeller.—If one person compel another, by menacing him with death, to murder a third person, still it is not lawful for the person so menaced to commit the murder ; but he must rather refuse, even unto death.* The retaliation, however, is upon the compeller, if the murder be wilful."(*c*) This latter point is stated according to the opinion of Haneefah and Imam Mahomed, who consider the compelled person as the instrument rather than the author of the homicide, yet subject to discretionary punishment, if the circumstances of the case appear to require it. But others among the lawyers disagree, and contend that both parties are liable to the penalty of murder. Mr. Harington says, "the principle of justification established by Aboo Haneefah and Imam Mahomed is applicable, *a fortiori*, to every case of physical compulsion, and necessity, in which the homicide may be altogether involuntary on the part of the person, who is forcibly made the instrument of committing it. But no illegal act can be justified under the Mahomedan law by the mere command, or influence, unaccompanied with force or menaces, of a parent, husband, or master, or of any other person whatever."(*d*)—"If a person upon compulsion commit *zina*, he is liable to punishment, according to Haneefah ; but the two disciples maintain the contrary."(*e*)

* But see opinion of law-officers : para. 140.

(*a*) Hed. Trans. vol. 3, page 452.—A person may lawfully eat or drink a prohibited article upon a compulsion which threatens life or limb ; and therefore, if he persist in refusing to eat or drink such article until he lose his life or limb, he is an offender, because he is then an accessory to his own destruction, in the same manner as if he were to refrain from eating carrion when dying with hunger. Hed. Trans. vol. 3, page 459.

(*b*) It was for some time disputed among European lawyers, whether a man in extreme want of food or clothing might justify stealing either to relieve his present necessities ; but the law of England admits now of no such excuse. Blackstone, book 4, chap. 2.

(*c*) Hed. Trans. vol. 3, page 461.

(*d*) Harington's analysis vol. 1, page 249.

(*e*) Hed. Trans. vol. 3, page 465.

99. When a person, brought before a magistrate in a state of alleged insanity, is charged with having committed a criminal act of a serious nature, such as, supposing him not to be insane, would render him upon conviction liable to punishment, the magistrate is in the first instance to make a full enquiry to ascertain the fact of his real insanity ; and should cause him to be occasionally examined by the surgeon, in such way as to enable him to form an opinion of the state of the prisoner's mind.—If it be proved to his satisfaction that the prisoner is really insane, he is to close his proceedings with a statement of his opinion to that effect, and to submit them to the session judge ; and he should have a sufficient number of witnesses present besides the surgeon, who may be able to depose to the prisoner's previous state of mind.—If the insanity be not established, he is to proceed as in other cases of criminal charges. C. O. Nos. 307, para. 3, and 137 of vol. 1.

**Regulation
Law.**

Proceedings on the trial of an insane person.
Duty of magistrate.

100. The session judge, after inspecting the proceedings, seeing the prisoner, and examining the surgeon on oath as to the grounds of his opinion, is to pass such orders as may appear proper ; and, if satisfied of the actual insanity, is to instruct the magistrate to keep him in further custody, or to send him to the insane hospital of the division, until his sanity be restored. On being pronounced sane, he should be again brought before the magistrate, by whom the charge against him may be properly cognizable, that he may be regularly put upon his trial, and the proceedings on the charge against him be completed before the proper tribunal. C. O. Nos. 307, para. 4, and 137 of vol. 1 ; and Const. No. 822.

Duty of judge.

101. A similar course of proceeding would be proper, in the event of the prisoner having been committed by the magistrate for trial before the sessions, and found insane by that court at the time of trying the commitment ; in which case the trial must necessarily be postponed, until the prisoner recover. C. O. No. 307 of vol. 1, para. 5.

If prisoner is found insane on trial before the sessions.

102. In the same manner, in the case of a prisoner standing mute, the magistrate is to cause him to be occasionally examined by the surgeon in such a way as to enable him to form an opinion, whether he is mute from obstinacy, from any real impediment of speech, or from an affection of the mind. And if the prisoner is committed to the sessions, he is to have witnesses in attendance besides the surgeon to depose as to the previous existence or otherwise of the dumbness.—If the prisoner's entire disability to hear or speak be well established, enquiry should be made among the relations and friends of the prisoner, whether any one has been in the habit of communicating with him by signs and tokens ; and such person may be employed as an interpreter between the prisoner and the court, if previously sworn to interpret truly. But if it is impracticable by any means to convey intelligence to him, it is incumbent on the judge to enquire for, and take, all the evidence which the circumstances of the case may indicate for the prisoner's defence ; and carefully ascertain and record every point which may make in his favor.—If the prisoner appear to be dumb, but not deaf, and apparently in a sane state of mind, the judge will be generally able from the signs and tokens of the prisoner, in answer to questions put to him, to complete the trial in a regular and satisfactory manner. C. O. No. 137 of vol. 1.

Proceedings in the case of a person remaining mute, as if deaf and dumb.

Dumb, but not deaf.

103. In the case of a prisoner standing mute, it is not sufficient that the deposition of the surgeon be taken as to his sanity, or otherwise ; but he should be examined specifically as to the cause of his standing mute. N. A. R. vol. 2, page 416.

Commitment.

104. A prisoner was committed on the charge of "murder while in a state of insanity." The wording of this was held to be erroneous and absurd, taken as a criminal charge, the magistrate not being competent to determine the question of sanity or otherwise. N. A. R. vol. 3, page 60.

Accused persons are not to be acquitted for unsoundness of mind, unless it is shown that they were incapable of knowing at the time of doing the act, that they were doing an act forbidden by law.

105. No person, who does an act which, if done by a person of sound mind, is an offence, is to be acquitted of such offence for unsoundness of mind, unless the court or jury, as the case may be, in which, according to the constitution of the court, the power of conviction or acquittal is vested, finds that, by reason of unsoundness of mind, not wilfully caused by himself, he was unconscious, and incapable of knowing, at the time of doing the said act, that he was doing an act forbidden by the law of the land. (a) Act IV. 1849, sect. 1.

(a) The following observations taken from a late work, may be accepted as a commentary upon this definition. "It is agreed by all jurists and is established by the law of this and every other country, that it is the reason of man which makes him accountable for his actions, and that the deprivation of reason acquits him of crime. Neither in civil, nor in criminal cases, however, will our law, provided a man be *compos mentis*, measure the degree of his capacity. A weak man, albeit much below the ordinary standard of human intellect, is bound by his contracts, may exercise dominion over his property, and is responsible for his crimes. From such responsibility he alone is emancipated who is, in the language of our law *non compos mentis*. The main inquiry before us, accordingly, is this ;—what may, in connection with criminal law, be the meaning and significance of the phrase just used ? what is that kind or species of insanity which exempts from punishment on the ground that its existence is inconsistent with a criminal intent ? Clearly it is not every degree of insanity which suffices for this purpose. Many men of general ability are upon some one topic insane, provided their opinions be tested by those entertained by the world at large. One labouring under the grossest delusions may for many purposes be treated, and held accountable, as if sane, ex. gr. he may, possibly, be admitted to give evidence on a criminal trial in a court of law ; and where such an objection is taken to the competency of a witness, it is for the judge to say whether the insane person has the sense of religion in his mind, and whether he understands the nature and sanction of an oath ; and then the jury will have to decide on the credibility of, and weight due to, his evidence. It is clear, then, that a man may be *non compos mentis quoad hoc*, and yet not *non compos mentis* altogether. In *McNaghten's case*, the accused was charged with murder, and, the fact of wilful homicide being established, the defence of insanity was set up, supported by evidence that the accused was affected by morbid delusions which carried him beyond the power of his own control as regarded acts connected therewith, and left him no moral perception of right and wrong. It was further shewn to be the nature of the disease under which the prisoner suffered, gradually to acquire intensity, and then suddenly to develop itself with great violence ; the prisoner was acquitted on the ground of insanity. In consequence of this verdict, which led to some discussion in the House of Lords, certain questions were by that House proposed to the judges, from the answers to which, given by the majority of the bench, must be deduced the degree of criminal responsibility attaching to one affected with mental disease ; it becomes necessary, therefore, in this place to set out the substance of the questions, on the occasion alluded to, thus formally proposed, and of the answers advisedly returned thereto. The first question submitted to the judges in *McNaghten's case* was as follows ;—"What is the law respecting alleged crimes, committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons ; as, for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit ?" To this question, the answer given was, that a person labouring under such partial delusion only, and not being in other respects insane, although he did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, is nevertheless punishable according to the nature of the crime committed, "if he knew at the time of committing such crime that he was acting contrary to law," i. e. to the law of the land. We further collect from *McNaghten's case*, that, when a person alleged to be afflicted with insane delusions respecting one or more particular subjects or persons is charged with the commission of a crime, and insanity is set up as a defence, the jury should be instructed, that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction ; and that, to establish a defence on the ground of insanity, it must be clearly shewn, that, at the time of the committing of the act charged in the indictment, the party accused was "labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing ; or, if he did know it, that he did not know he was doing what

106. The atrocity of the murder or other act charged, is no ground for the presumption of insanity. Reports *W. P.* 1853, part 2, page 1014.

107. Although a prisoner may have been under some fanatical impression that his thakoor had warned him to offer a human sacrifice, such a motive, with a person of sound and settled understanding in all the ordinary affairs of life, cannot be admitted as a legal extenuation of the crime of murder. Reports *L. P.* 1851, page 24. Nor can the assertion by the prisoner of some fanciful suspicion, as the motive of his crime, be admitted as any extenuation of it. *N. A. R.* vol. 6, page 110. Ungovernable rage springing from a cause which does not itself justify, or a diabolical impulse, cannot be admitted as an extenuation of murder. Reports *W. P.* 1853, part 2, page 941 ; 1854, part 2, page 61.

Fanatical impression or suspicion.

108. The legal test of insanity in the courts of this country is laid down in sect. 1, Act IV. 1849. No person can be acquitted for unsoundness of mind, unless it be proved that "by reason of unsoundness of mind, not wilfully caused by himself, he was unconscious,

was wrong." If the accused was conscious that the act in question was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable. The usual course, accordingly, is to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act which was wrong ; the question thus submitted being accompanied with such observations, and explanations as the circumstances of each particular case may require.

Another question of much interest also sometimes presents itself on a criminal trial ;—If a person under an insane delusion as to existing facts commits an offence in consequence thereof, is he thereby excused ? The answer to this question is, that, if the accused labours under a partial delusion only, and is not in other respects insane, he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self defence, he would be exempt from punishment. If his delusion was, that the deceased had inflicted a serious injury on his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment.

To the evidence of scientific men conversant with the disease of insanity, who have examined and conversed with the accused person,—who can, besides testifying to his words and actions, explain the nature of the delusions under which he may be labouring, and the ordinary effect of such delusions upon the mental functions,—much weight will naturally be attached by a jury when engaged in the arduous task of investigating the question, whether one accused of crime was sane or insane at the time of its commission. Where, moreover, on the trial of such an issue, the facts of the case are admitted or not disputed, and the question becomes substantially one of science only, it may be *convenient* to ask a medical witness, who has been present during the trial, his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, and as to his perception of the difference between right and wrong ; but, as we learn from *M'Naghten's case*, it is not a matter of *right* to put such a question.

Amongst medical practitioners, however, and those experts who have appeared as witnesses to give evidence touching insane and morbid delusions at criminal trials, a very wide difference of opinion exists on various important points relating to the responsibility of persons mentally affected, and mainly as to these fundamental questions ; Are there states and conditions of mind in which responsibility is modified only—not annulled ? May the insane be, in certain cases, fit objects for punishment ? Nay, further, may not punishment be so applied to some criminals of unsound mind that the reason of its application may be appreciated by them and beneficial results thence ensue ? It is the opinion of some scientific men, that much may be said in favour of a scale of punishment for the insane, graduated—so far as the results of experience and observation may permit—to their different degrees of responsibility and criminality. The enquiry hinted at, however, could scarcely, with propriety, be conducted in these commentaries, which profess to deal with the law as it is, not as, in the opinion of jurists, it ought to be. I will merely add, therefore, that when a person, upon his trial for an alleged crime, seeks to excuse himself upon a plea of insanity, it will be for him to make out clearly that he was insane at the time of committing the offence charged against him. The onus of so doing rests on him, and the jury must be satisfied that, at the time in question, he actually was insane. If the matter be left in doubt, it will be their duty to convict him, for, as already stated, "*Every man must be presumed to be responsible for his acts till the contrary be clearly shown.*" *Broom's Commentaries upon the Common Law*, page 879.

and incapable of knowing, at the time of doing the act, that he was doing an act forbidden by the law of the land." The medical officer should be examined as to whether, and on what precise grounds, he considers the prisoner to have been, at the time of committing the act charged, within the description above set forth. The witnesses to the prisoner's habitual state of mind should be examined in the presence of the medical officer, and he should be invited to propose any questions to them on his own part. He should then be carefully questioned as to the number of times he has himself seen the prisoner, the nature of his conversations with him, and all the circumstances from which, apart from the prisoner's real or professed religious delusions, he is led to regard him as of unsound mind. The questions should be expressed so as to elicit the opinion of the medical officer, after his having had the advantage of hearing the statements of the members of the prisoner's family, his neighbours, and other parties, as to the state of the prisoner's mind both *previously to* and *at the time of* the act charged, and *subsequently up to the time of trial*. Reports *L. P.* 1851, page 24. N. A. R. vol. 6, pages 144 and 346. Reports *W. P.* 1853, part 2, page 1020. It may be desirable also to take the evidence of the native doctor and hospital attendants : if the madness is only feigned, the prisoner would doubtless be much less on his guard with them than before the medical officer. N. A. R. vol. 6, page 333.

If the law officers of the Nizamut acquit on the ground of insanity, and the judges convict.

109. Two or more judges of the nizamut adawlut are competent to convict and punish a prisoner charged with a criminal offence, in opposition to his acquittal by their law-officers, in any case in which the futwa declares the legal penalty, or punishment generally, barred by reason of a doubt as to the prisoner's sanity when he committed the act charged ; provided that the judges, on due consideration of the evidence, are satisfied that there is no sufficient ground to believe that the prisoner was insane when he committed the act so charged, and that he is a proper object of punishment. Reg. IV. 1822, sect. 7.

Insanity supervening subsequent to the perpetration of the crime, and prior to conviction.

110. The circumstance of supervening insanity, subsequent to the perpetration of a crime at a time when no degree of derangement existed, and prior to the conviction of the prisoner for such crime, having been declared by the law-officers, in a case of murder, to bar all capital or discretionary punishment, and to subject such person to diyut only,—in all such cases, viz. of a prisoner's being afflicted with insanity subsequent to the commission of any crime, and of his subsequent perfect recovery, the law-officers of the nizamut adawlut are to be called upon to declare what the futwa would have been, if such derangement had not intervened, and the judges are to pass sentence under the general regulations, and on consideration of all the circumstances of the case, the same as if no such malady had happened to the prisoner. Reg. IV. 1822, sect. 4.

If insanity proved after conviction.

111. The nizamut adawlut upon the report of the session judge, cancelled the sentence passed by the latter upon a prisoner, whose insanity at the time of the committing the offence, of which he was convicted, was established subsequently to conviction. N. A. R. vol. 6, page 80.

Special judgment to be given in such cases.

112. Whenever a person charged with any offence is acquitted, because he is within the exception made by the foregoing section, the court or jury is to give a special judgment or verdict, that he did the act charged against him, being then of unsound mind, so as to excuse him according to law. Act IV. 1849, sect. 2.

113. When prisoners are acquitted on the ground of insanity, the following form of sentence is to be adopted:—"With reference to the provisions of sects. 1 and 2, Act IV. 1849, I acquit the prisoner, because I find that he is entitled to a special judgment of acquittal, on the ground that he did the act charged against him, being then of unsound mind, so as to excuse him according to law." C. O. No. 2, January 13, 1854, *L. P.*

114. Whenever such special judgment or verdict, as aforesaid, has been given against any person, the court, before which the trial was had, is to order him to be kept in strict custody for such time and in such manner as to the government seems fit. Act IV. 1849, sect. 3.

And the prisoner is to be confined during the pleasure of government.

115. Whenever a person is acquitted of any offence because he is within the exception made by sect. 1, Act IV. 1849, the court before which the trial was had, is to order the prisoner to be kept in safe custody until the pleasure of government shall be known, and is immediately to report the result of the trial to the Secretary to Government, Judicial Department, and apply for the requisite instructions regarding the disposal of the prisoner. Session judges are to communicate direct with the government on this subject. Magisterial officers are to submit their applications to the government through the channel of the session judge's office. C. O. No. 29 of vol. 4, *W. P.* Such applications are to be accompanied by a copy and translation of the evidence which has been held to prove the insanity. C. O. No. 128, Feb. 7, 1854, *W. P.*

116. In all cases in which, before the passing of this Act, any person has been acquitted of any offence on the ground of insanity, lunacy, idiocy, or unsoundness of mind, such person may be kept in the same strict custody, in which persons may be kept, who shall be hereafter acquitted for unsoundness of mind. Act IV. 1849, sect. 4.

These rules apply to persons confined, after an acquittal on the ground of insanity, before the passing of the Act.

117. No person, against whom any such special judgment or verdict has been given, is to be entitled to be discharged out of custody, on being restored to soundness of mind, unless by order and at the discretion of government. Act IV. 1849, sect. 5.

No person in such predicament can be discharged without the order of go-

118. Whenever it appears to the government that any person, imprisoned by the sentence of any court, is of unsound mind, the government by a warrant, which is to set forth the grounds of belief that such prisoner is of unsound mind, may order the removal of such prisoner to a lunatic asylum, or other fit place of safe custody, there to be kept and treated as the government shall order; and, when it appears to government that such prisoner has become of sound mind, the government by a warrant directed to the person having charge of him is to remand such prisoner to the prison from which he was removed, if then still liable to be kept in custody, or, if not, is to order him to be discharged out of custody. Act IV. 1849, sect. 6.

If a person undergoing a sentence of imprisonment becomes of unsound mind.

119. The permission of government must be obtained for the removal to the insane hospital of a prisoner, who has become insane while under sentence. N. A. R. vol. 6, page 80.

120. Applications for the liberation of persons convicted of having committed penal acts while laboring under insanity, and directed to be kept in confinement until their restoration to reason, are invariably to be accompanied by a medical history of the prisoner's case from its coming under the notice of the local medical authority, of its peculiar features, together with an account of the patient's mental variations, his improvements, relapses, and final recovery,

Applications for the release of recovered insanes, are to be accompanied by medical history of the case.

and a specification of the period during which he may have remained free from any return of the malady, or of symptoms denoting its approach. Unless this history be in every respect satisfactory and conclusive as to the restoration of the prisoner to a state of sanity likely to be permanent, the application must, for the sake of public safety, be disallowed. Magistrates should require the civil surgeon, or other medical officer having charge of the prison or the lunatic asylum, in case of his removal, to put on record a professional history of the nature described respecting each prisoner labouring under mental derangement, in order that the object proposed by this order may not be frustrated by mutations of incumbency in the situation of civil surgeon. C. O. No. 221 of vol. 3.

Civil surgeon to keep on record such a professional history.

When a person is acquitted on the ground of insanity after trial on a charge of murder,

specific penal sum.

Forms of engagement.

of the term "government."

Practice and precedents in cases of crimes committed during insanity.

121. On the occasion of delivering over to the care of their relations or friends individuals who have been acquitted by the nizamat adawlut, upon the ground of insanity, after trial on a charge of murder, if no specific penalty is mentioned in the bond, which the parties receiving charge of the liberated individuals are required to execute for the prevention of further mischief, it is to be apprehended that, from the undefined nature of the responsibility, engagements may be executed without due consideration, to the manifest danger of the community: in such cases therefore the magistrates are to require the parties taking charge of the person released to execute an engagement in a specific penal sum, suited to their rank and condition in life, to be forfeited in the event of their not taking such care of the individual committed to their charge, as may prevent his doing further mischief. Forms of engagement of security (with translations), prescribed for adoption in cases of persons convicted of having committed any penal act while in a state of insanity, are given in appendix C, No. 31. C. O. No. 325 of vol. 1; and No. 61 of vol. 3, *L. P.*

122. The word government in this Act is to be taken to mean the governor, or governor in council, or other person or persons administering the government of the presidency or place where the trial is had. Act IV. 1849, sect. 7.

123. The following summary of the cases given in the old series of the Nizamut Adawlut Reports will shew the practice of that court on the trials of persons, who are, or appear, or profess to be, insane. But it must be remembered that the cases occurred prior to the enactment of Act IV. 1849.

124. Prisoner *acquitted* on proof of present and previous insanity, but detained in custody until the recovery of reason. Vol. 1, pages 19, 270. Vol. 2, pages 68, 383.

125. Prisoner *acquitted* on the ground of insanity or mental derangement, notwithstanding the want of all proof of previous aberration of intellect, and detained in custody until the recovery of reason. Vol. 1, pages 96, 192, 258. Vol. 2, page 260. Vol. 3 pages 239, 243. Vol. 4, pages 264, 267.(a)

126. Prisoner *acquitted* on the ground that the act was committed in a temporary fit of derangement produced by sudden irritation, and on proof of previous insanity; and detained

(a) When the prisoner has been detained in custody as insane, the court have required that he should not be released on recovery without a report to them in the following cases: Vol. 1, page 96. Vol. 2, pages 189, 233. Vol. 3, pages 239, 243:—and have not required such report in the following:—Vol. 1, pages 192, 258. Vol. 2, page 260.

in custody until some relation or friend should undertake the charge of him, so as to prevent his doing future mischief. Vol. 1, page 127.

127. Prisoner *acquitted* on the ground that he committed the act in a sudden paroxysm of fever, and discharged. Vol. 1, page 300.

128. Prisoner *convicted*, the plea of insanity not being proved. Vol. 1, pages 128, 211. Vol. 2, page 344. Vol. 3, pages 60, 286. Vol. 4, page 176. Vol. 5, page 197.

129. Prisoner *convicted*, his standing mute being considered obstinacy or artifice. Vol. 1, page 357. Vol. 2, pages 365, 416. Vol. 3, page 158.

130. Prisoner *convicted*, the plea of insanity being set aside, and the act attributed to religious phrenzy. Vol. 1, page 384. Vol. 3, page 251.

131. In the case of the murder of a boy by his uncle without provocation and in the presence of witnesses, the court deemed the circumstances so extraordinary, that they returned the case with directions to ascertain the prisoner's state of mind previous to the occurrence. Vol. 4, page 230.(a)

132. Prisoner convicted, and sentenced to imprisonment for life, when the evidence to his state of mind, while in jail awaiting trial, led to the inference that the man was not in what can be considered a perfectly sound state of mind, when he committed the murder. N. A. R. vol. 6, page 333. So it was held that although a prisoner may not be entitled to acquittal on the grounds of insanity, yet that there may be circumstances connected with the general state of his mind which show an insane tendency, and render it proper that he should be exempted from capital punishment. Reports *L. P.* 1851, page 1527; and 1855, part 2, page 684.

133. Prisoner appearing to be insane at the time of trial, was ordered to be confined, with instructions that, on recovery of his reason, the evidence taken against him should be explained to him, his defence taken, and the law officer called upon for a fresh futwa. N. A. R. vol. 2, page 12.

134. Prisoner was tried while labouring under insanity, and acquitted by the judge on that ground. The court quashed the proceedings and required attention to C. O. No. 307 of vol. 1. Vol. 5, page 138.

r. ¶. 101.

135. A prisoner, who had been deaf and dumb from infancy, convicted of murder, was sentenced to death. He made his defence by signs communicated to and explained by his brother. It was proved that he was a professional latyal, and had been hired to participate in the outrage in which he committed the murder. The Court remarked, that a capacity to undertake and carry out a deed of this nature, argued that the prisoner's intelligence was well

Case of deaf and dumb man sentenced to death.

(a) In some cases the prisoner has been allowed the benefit of a doubt of sanity, when there appeared no motive for the commission of an act, of which it seemed *prima facie* that a man in his right mind would not be guilty (vol. 2, page 260; vol. 4, page 267; vol. 6, pages 107 and 281); but in another case (vol. 2, page 344) such consideration is distinctly disallowed, the court appearing to coincide with the circuit judge, who "considered it highly dangerous to the peace of society to permit murderers to escape justice, merely because an European judge, very imperfectly acquainted with the motives of action which prevail among the natives, could not discover the train of reasoning which induced them to perpetrate such diabolical acts." So also, vol. 6, page 163.

known and relied upon by his associates; and his defect of speech and hearing did not prevent him from communicating with others, nor deprive him of the means of making a defence on trial. Reports *L. P.* 1855, part 1, page 523.

Infancy.

136. The following synopsis of cases given in the Nizamut Adawlut Reports will show the practice of the court in regard to criminals of immature age.—At the age of 9 a prisoner was held not to be a fit subject for punishment; [vol. 1, page 152;] and beyond that period till 18 years of age, the youth of the prisoner has always been more or less considered in mitigation of punishment. A girl of the age of nine years and a few months, but who showed herself abundantly *doli capax*, was convicted of wilful murder, and sentenced to imprisonment for life; [vol. 1, page 213;] and in six other cases capital punishment was barred solely by reason of the non-age of the prisoner; [vol. 1, page 215; vol. 2, pages 2, 145, and 471; vol. 3, page 179; and vol. 5, page 53;] in these cases the age of the prisoner was respectively 14, 12, 16, 14, 13, and 18. Prisoners have been condemned capitally at the ages of 18 and 20; [vol. 4, page 265; and vol. 5, page 178.] Other instances are reported, in which the usual and merited punishment has been mitigated on account of youth; [vol. 1, page 148; vol. 2, pages 20, and 331; vol. 3, page 147; and vol. 4, page 305.] A youth was punished, on conviction of carnally knowing a girl aged eight years, at which age her consent was immaterial, with 15 ratans and 6 months' imprisonment; [vol. 2, page 452.] A boy only ten years old, being convicted by the *futwa* of rape on a girl only three years old, the court viewed it as an attempt only, and punished it as a misdemeanor with one year's imprisonment; [vol. 3, page 87.]

137. Where a girl of 10 years of age murdered her husband, it was proved by her own confession that she was well aware of the difference between actions, as she stated that she did not intend to murder, but merely to punish or hurt him; and it was held that she had an intelligence which made her responsible for the commission of criminal acts, although her judgment was yet immature. She was sentenced to imprisonment for 10 years. Reports *L. P.* 1853, part 2, page 57.

138. Although the *futwa* acquits the prisoner because the record does not establish that he has arrived at manhood, yet the court has power to pass sentence on him, if it be proved that, from his intelligence and capacity of judging as to the nature and consequences of his acts, he is a proper object of punishment. Reports *L. P.* 1853, part 1, page 895.

Intoxication.

139. As regards intoxication, the nizamut adawlut has held in practice, that although it cannot be admitted as a temporary defect of will so as to bar punishment in the same manner as infancy and insanity, yet it should be allowed weight in judging of motives and intentions. There is a great difference between an offence entered upon with deliberation and a criminal intent, and one committed without premeditation and unprovoked by previous enmity and malice.—Intoxication voluntarily caused, cannot of course excuse crime. But allowance might still be made, in awarding punishment, for a loss of reason so great, as that a person could scarcely be supposed to be conscious of his acts. Reports *L. P.* 1853, part 2, page 98. The court admitted the principle adopted in English law, that, though voluntary drunkenness cannot excuse the commission of crime, yet where, as upon a charge of murder,

the question is, whether an act was premeditated, or done only from sudden heat or impulse, the fact of the party being intoxicated has been held to be a circumstance proper to be taken into consideration. Reports *W. P.* 1855, part 2, page 663. Intoxication was considered as a ground of mitigation of punishment in the following cases; N. A. R. vol. 1, pages 157 and 247; vol. 2, pages 24 and 453; vol. 3, pages 6 and 33; and vol. 4, page 8. But it was not so considered in a case [vol. 3, page 216] in which it was shown that the prisoner had wilfully employed such means to nerve him to the commission of the crime; for there the guilt was premeditated and the malice constant; and “the drunken man, like his sword, was the mere instrument of giving effect to such intent.” In another case [vol. 1, page 23] the plea of intoxication was invalidated by the evidence.

140. The prisoner killed the deceased by order of his master, and under fear of immediate death in case of refusal. The *futwas* of both courts declared him not liable to *kisas*, and that he should be released.* The Court accordingly directed his immediate discharge. N. A. R. vol. 1, page 101. Where a nephew killed his uncle at the request and by the command of the latter, under the threat of death in case of refusal, and it was proved, that he could have refused, as the murder was committed with the sword which the uncle gave to the prisoner for that purpose, he and the others present were sentenced to 14 years' imprisonment in banishment, and to lesser periods of imprisonment according to the degree of implication. Reports *W. P.* 1854, part 2, page 573.

Compulsion.

* cf. ¶ 98.

141. In a case of fraud, it was held that the session judge erred in acquitting certain of the prisoners “because being defenceless persons they acted on compulsion, and unhesitatingly confessed what they had done.” These circumstances, the sudder court remarked, furnished sufficient ground for mitigation of punishment; but they did not justify a positive acquittal. The prisoners were perfectly aware that they were aiding and abetting a fraud, and there was no *compulsion* in the case. Reports *W. P.* 1851, page 25.

142. The orders of a superior authority cannot be held to justify a gross infraction of the peace, or other offence, committed under circumstances which can leave no doubt on the mind of the offenders of the criminality of the act;—although such consideration may be allowed weight in allotting the quantum of punishment; N. A. R. vol. 3, page 128. But a person may be justified if the criminality of the act is not obvious, and if he considers himself bound to obey the party from whom he receives instructions to commit it. N. A. R. vol. 2, page 330.

Orders of a superior.

143. It is not the practice of the courts, to include wives, who are presumed to be under the influence of their husbands, in the sentence and punishment awarded to the male offenders; unless some individual act be distinctly proved against them of a nature to bar the operation of this rule by showing that they acted independently, and not under the influence of their husbands. Reports *W. P.* 1853, part 2, page 1142. The mere receipt from the husband of property stolen by him is not punishable. Reports *W. P.* 1854, part 1, page 93.

Wives under the influence of husband.

144. A husband and wife should not be indicted jointly as receivers of stolen property found in their house, unless it be in evidence that the latter acted independently, and not under the influence of her husband. N. A. R. vol. 1, page 353; and vol. 6, page 92.

SECTION III.

OF PRINCIPALS AND ACCESSARIES.

**English
Law.**

145. When two or more persons are charged with the commission of a felony, they are considered as either—*first*, principals in the first degree; *secondly*, principals in the second degree; *thirdly*, accessaries before the fact; or *fourthly*, accessaries after the fact. And in either of these characters they are felons in consideration of law; for he who takes any part in a felony is in construction of law a felon, according to the share which he takes in the perpetration of the offence.

**Principal in the
first degree.**

146. A principal in the first degree is one who is the actor or actual perpetrator of the fact. But it is not necessary that he should be actually present when the offence is consummated; for if one lay poison purposely for another, who takes it and is killed, he who laid the poison, though absent when it was taken, is a principal in the first degree. So, it is not necessary that the act should be perpetrated with his own hands; for if the offence be committed through the medium of an irresponsible or innocent agent, the employer, though absent when the act is done, is answerable as a principal in the first degree. But if such agent is aware of the consequences of his act, he is a principal in the first degree, and the employer, if he be absent when the fact is committed, is an accessary before the fact; or, if he be present, a principal in the second degree.

**Principal in the
degree.
Aiders and abet-
tors.**

147. Principals in the second degree are those who are present aiding and abetting at the commission of the fact.—They are called also aiders and abettors, and sometimes accomplices, but the latter appellation will not serve as a definition, because it includes all the participes criminis.—This presence need not always be an actual immediate standing by, within sight or hearing of the fact; but there may be also a constructive presence, as where one commits a murder, and another keeps watch or guard at a distance. But he must be sufficiently near to give assistance; and the mere circumstances of a party going towards a place, where a felony is to be committed, in order to assist to carry off the property, and assisting in carrying it off, will not make him a principal in the second degree, unless, at the time of the felonious taking, he were within such a distance as to be *able* to assist in it.—If an act is committed in pursuance of a previous concerted plan, parties not present, or in such proximity, are not principals, but accessaries before the fact. So, if one of them have been apprehended before the other have committed the offence, he can be considered only as an accessary before the fact. But presence during the whole transaction is not necessary, as where several persons combine to forge an instrument, and each executes by himself a distinct part of the forgery, and they are not together when the instrument is completed, they are, nevertheless, all guilty as principals. There must also be a participation in the act; for merely standing by and not attempting to prevent the felony, or to apprehend the felon, does not make a man a principal.—But if one encourage another to commit suicide, and be present abetting him while he does so, such person is guilty of murder as a principal; and if two persons encourage each other to self-murder and one kills himself, but the other fails in the attempt, he is a principal in the murder of the other. So likewise, if several persons com-

bine for an unlawful purpose, or for a purpose to be carried into effect by unlawful means; particularly if it is to be carried into effect notwithstanding any opposition that may be offered against it; and one of them, in the prosecution of it, kill a man, it is murder in all who are present, whether they actually aid or abet or not, provided the death were caused by the act of some one of the party in the course of his endeavours to effect the common object of the assembly. But the act must be the result of the confederacy; for if several are out for the purpose of committing a felony; and, upon alarm and pursuit, run different ways; and one of them kill a pursuer to avoid being taken; the others are not to be considered as principals in that offence. The purpose must also be unlawful; for, if the original object be lawful, and be prosecuted by lawful means, should one of the party in the prosecution of it kill a man, although the party killing, and all those who actually aid and abet him in the act, may, according to circumstances, be guilty of murder or manslaughter, yet the other persons who are present, and who do not actually aid and abet, are not guilty as principals in the second degree. There must be a felonious participation in the design, as well as a participation in the act.—Aiders and abettors may be tried before the principal in the first degree has been found guilty; may be convicted, even though he is acquitted.

148. An accessory before the fact is he who, being absent at the time of the offence committed, doth yet procure, counsel, command, or abet another to commit a felony; and he also is so considered, who shows an express liking, approbation, or assent to the felonious intent of another, although he gives no encouragement or hope of any immediate help or assistance. But he who barely conceals a felony, which he knows to be intended, is guilty only of misprision of felony, and is not an accessory. The difference between a principal in the second degree, and an accessory before the fact, lies in this, that the former must be *present* aiding and abetting: but it is essential, to constitute the offence of accessory, that the party should be absent at the time the offence is committed. A man may be an accessory before the fact by the intervention of a third person, as he who procures a felony to be done is a felon.—There can no accessories before the fact in those offences, which by judgment of law are sudden and unpremeditated, as manslaughter and the like; and all persons concerned in crimes under the degree of felony are principals.—An accessory cannot be guilty of a higher crime than his principal.—If the principal totally and substantially *varies* from the terms of the instigation; if being solicited to commit a felony of one kind, he wilfully and knowingly commit a felony of another; he will stand single in that offence, and the person soliciting will not be involved in his guilt;—but it is different, if the principal *complies in substance* with the instigation of the accessory, varying only in circumstance of time or place, or in the manner of execution; or where the principal goes beyond the terms of the solicitation, if in the event the felony committed was a probable consequence of what was ordered or advised.—If the principal *by mistake commits a different crime* from that to which he was solicited by the accessory; as *e. g.* if A counsels B to kill C and he by mistake kills D;—the accessory is answerable only when the crime committed is the probable consequence in the ordinary course of things of his flagitious advice. Accessories before the fact may be tried whether the principal has or has not been convicted; but, if once tried as accessories, they are not liable to be again tried for the same offence.

Accessory before
the fact.

Accessory after
the fact.

149. An accessory after the fact is one who, knowing a felony to have been committed by another, receives, relieves, comforts, or assists the felon. Any assistance given to one known to be a felon, in order to hinder his being apprehended, or tried, or suffering the punishment to which he is condemned, is a sufficient receipt to make a man an accessory of this description; so also to convey instruments to a felon to enable him to break jail, or to bribe the jailer to let him escape; also whoever rescues a felon from an arrest for the felony, or voluntarily and intentionally suffers him to escape is an accessory to the felony; but not if he merely suffers the escape by omission: and it has been said, that those are in like manner guilty who oppose the apprehending of a felon. But a person is not an accessory after the fact, if he supply a felon in prison with victuals or other necessities for his sustenance; or relieve or maintain him if he be bailed out of prison; or if a physician or surgeon professionally attend a felon sick or wounded, although he know him to be a felon; or if a person speak or write in order to obtain a felon's pardon or deliverance; or advise his friends to write to the witnesses not to appear against him at his trial, and they write accordingly; or even if he himself agree, for money, not to give evidence against the felon; or know of the felony and do not discover it. He must be proved to have done some act to assist the felon personally. But if he employ another person to do so, he will be equally guilty as if he harboured or relieved him himself. A man may be an accessory after the fact, by receiving one who was an accessory before, as by receiving a principal;—and it has been holden, that a man may make himself an accessory after the fact to a larceny of his own goods, or to a robbery on himself, by harbouring or concealing the thief, or assisting in his escape. The receiver must have had notice, either expressed or implied, of the felony having been committed, in order to make him an accessory by receiving the felon; and the felony must also be complete at the time of the assistance given. A wife is not made an accessory by receiving her husband; but the latter may be an accessory for the receipt of his wife. And no other relation of persons can excuse the wilful receipt or assistance of a felon; a father cannot assist his child, a child his parent, a brother his brother, a master his servant, or a servant his master. If the wife alone, the husband being ignorant of it, receive any other person being a felon, the wife is accessory and not the husband: and if the husband and wife both receive a felon knowingly, the wife is acquitted. Accessaries after the fact cannot be tried before the conviction of their principal, unless they consent to it; but having been once duly tried they cannot be again tried for the same offence.

Punishment.

150. The rule of the ancient law was, that accessaries should suffer the same punishment as their principals; but this is modified now. It seems that principals in the second degree, wherever mentioned in statutes, are made punishable in the same manner as principals in the first degree; but when by the construction of any particular statute principals in the second degree are not punishable by death (as when the punishment is imposed upon the person committing the offence, and not upon the offence by name), and no punishment is prescribed by the statute, they may be transported for seven years, or imprisoned for two. Accessaries before the fact are in the same manner generally made liable to the same punishment as principals in the first degree; but they are not punishable by death unless it is so expressly provided by statute; and if no penalty is provided, they may be punished equally

with principals in the second degree, as noted above. Accessories after the fact are not punishable by the common law for receiving, harbouring, or maintaining the principal in offences under felony; but in some few cases a penalty is inflicted by statute. Yet in those cases if the act of the receiver amount to a rescue, or the like, he is indictable for a misdemeanor. They are also liable to the same punishment as principals in the second degree, when no specific penalty is provided; but several of the later statutes have established the proportion which the guilt of accessories after the fact bears to that of accessories before the fact, in as much as they make the former subject to imprisonment for any period not exceeding two years, while the punishment of the latter extends to three years.(a)

151. It seems to be the general principle of Mahomedan law, that all parties concerned in an offence, whether as principals or accessories, are equally guilty, and are therefore liable to the same punishment. This appears from the books; but in practice the law-officers of our courts generally adjudge discretionary punishment to the aiders and abettors when the principals are declared liable to *kisas* or *hudd*. Privity to the commission of a crime, and concealment thereof, is also held to be an offence punishable by *seasut*.

**Mahomedan
Law.**
General principle.

152. "In a case of a single murder by a number of persons, the whole are liable to suffer death, although the principle of retaliation, which necessarily implies equality between the offence and the punishment, requires the capital punishment of only one. In this instance analogy is abandoned for more approved construction of the law (*istahsan*), because murder is most frequently committed by force, and retaliation has been ordained for the purpose of determent. Each individual is, therefore, as if he alone had committed the act; and consequently equality is certified, and retaliation incurred, that the lives of mankind may be in security." But according to one authority (quoted by Harington) this doctrine "is applicable to those only among the criminals who have given a mortal wound to the slain; and therefore accomplices employed in watching, or even those who assist in holding the hands and feet of the person murdered, are not liable to *kisas*; but may be punished in any mode of exemplary punishment (*seasut*) at the discretion of the magistrate."(b)

Accessories in a
case of murder.

153. So also in gang-robbery, according to analogy, the punishment of amputation should be inflicted on such only among the gang, as have actually carried out the property, because the offence is complete as regards them only; but by *istahsan* they are all punished equally. Some hold that they are all by construction equally concerned in the carrying out of the property, as aiding therein by watching or resisting opposition; "and that therefore, if these were not liable to amputation the door of punishment would be closed."(c) The latter opinion, if generally acknowledged, and carried out, would make the general principle of the Mahomedan and the English laws coincident.

In

154. "If any one of a gang of robbers commit murder, the prescribed punishment is inflicted upon the whole; because the punishment in this instance is considered as a penalty for the assault of the whole, which is established by each of them being aiding and abetting to the other."(d)

murder.

(a) Much of the above is taken from "Archbold's Pleading and Evidence in Criminal Cases."

(b) Hed. Trans. vol. 4, page 302. Harington's Analysis, vol. 1, page 262.

(c) Hed. Trans. vol. 2, page 104.

(d) Hed. Trans. vol. 2, page 133.

If one of the persons concerned is incapable of committing crime.

* *v. Preamble to*
LIII. 1803.

155. "If any one among the gang of robbers is an infant, or a lunatic, or a relation within the prohibited degrees of the person robbed, punishment is remitted, not only with respect to this person, but also with respect to all the rest of the party."* This is the opinion of Haneefah and Ziffer; but Aboo Yoosuf contends that this rule only obtains when such person is the actual perpetrator of the crime; and he founds his opinion on the argument, that if the offence is not complete in regard to the principal, so neither can it be in regard to the aiders and abettors; but that the completeness of the offence committed by the principal is not affected by a defect in the accomplices. The argument of Haneefah and Ziffer is, that "the robbery is a single offence committed by the whole party, and that is the cause of the punishment; but where it happens that the act of *some* of them is not an occasion of punishment, the act of the others is then only a *part* of the cause, and an effect cannot be established by a *part* of a cause."(*a*)

156. The opinion of Aboo Yoosuf appears to be upheld by an argument of Imam Mahomed in another place, in which he says, that "in *zina* the man is the principal, and the woman only the accessory; now the prevention of punishment in respect to the principal occasions the prevention of it in respect to the accessory; but the prevention of punishment with respect to the accessory does not occasion the prevention of it with respect to the principal. So if a man commit *zina* with a girl who is an infant or insane, he is liable to punishment, but no penalty is inflicted on the woman; but if a woman admit an idiot to commit *zina* with her, neither of the parties is punishable."(*b*)

Regulation Law.

General principle.

157. In general the regulations, in enacting the penalty for any particular offence, make the accomplices liable to the same punishment as the principals; as *e. g.* in the case of dacoity by section 4, Reg. LIII. 1803. And we may therefore take such to be the general principle of the law, though in practice a more lenient judgment is almost always considered sufficient for those not taking the actual lead in the designing or execution of the offence.

Explanation of
privity; and the
distinction between
being privy, and
being accessory to
a crime.

158. The act which constitutes that is called "privity" in this country corresponds with "misprision of felony" in English law, viz. the concealment or the procuring the concealment of a felony which a man knows but never assented to, or the observing silently the commission of a felony without using any endeavours to apprehend the offender; it is therefore strictly an offence of a negative kind consisting in the concealment of something that ought to be revealed. Accessaryship, on the other hand, is an offence of a positive kind and of a higher degree of criminality, implying an active participation, either by procuring, counselling, commanding, or abetting another, to commit a felony; or, with a knowledge that a felony has been committed by another, by receiving, relieving, comforting, or assisting the felon. The distinction between the two offences is marked: the one is a misdemeanor in English law, the other is a felony; the one is in its kind negative, requiring nothing but silent passive acquiescence in the commission of a felony to constitute it; the other is a positive participation in the commission of a felony, either by counsel and command before the fact, or by relief and assistance given to the felon after the fact. In selecting the following corresponding terms in the vernacular for these offences, the court have had regard to the fact

(*a*) Hed. Trans. vol. 2, page 134.

(*b*) Hed. Trans. vol. 2, page 30.

that, as either the constructive or actual presence of the accused at the time when the crime is committed is necessary to constitute complicity on his part, so the absence of the accused is essential to the charge of being an “accessary;” or, in other words, he who is present aiding and abetting in the commission of a felony may be an accomplice or a principal, but he cannot in the legal sense of the words be either accessory or privy to its commission.

Accomplice, شریک بوقت وقوع جرم (مکثر)

Accessary before the fact, شریک ماقبل وقوع جرم (अपराधे)

Accessary after the fact, (रि)

Accessary before and after the fact, ... } شریک ماقبل اور مابعد وقوع جرم (अपराधे)

Privity, ...

Aiding and abetting, ...

C. O. No. 8 of vol. 4.

Terms to be used in the vernacular.

159. An accomplice is he who aids and abets personally in the commission of a felony; an accessary before the fact is he who, absent at the time of the commission of a felony, procures and abets another to commit it. Reports *L. P.* 1852, part 1, page 569.

Distinction between accomplice and accessary before the fact.

160. The mere proof of the presence of the prisoner at the time of the assault, cannot be taken as a sufficient proof of criminal privity to the fact. *N. A. R.* vol. 6, page 228. But where the prisoner only stood passively by while his brother murdered a person against whom they had the same cause of enmity [and he might apparently have prevented the murder], he was convicted as a principal in the second degree. Reports *W. P.* 1855, part 1, page 254.

Actual not alone proof of guilt. But presence without interference may be criminal.

161. The court adopted the rule from English law, that if several persons be united in a criminal purpose, and any of them do any criminal act beyond the scope of such design, such of them as are not privy or assenting to the criminal act done, are not responsible for it. (a) Reports *L. P.* 1852, part 1, page 414.

How far criminal association affects others when the act of one is beyond the original design.

162. Where the prisoner, on being arrested, when part of the stolen property was found in the possession of his son, executed an ikrarnamah promising to restore all the property to the plaintiff in the course of four months, and the plaintiff accepted it,—held that he could not be convicted of privity to the theft on the ground afforded only by such ikrarnamah. *N. A. R.* vol. 6, page 135.

Stolen not sufficient evidence of privity to theft.

163. It was held that the concealment by a police officer of a murder, which was at the time only a matter of suspicion, and the actual perpetrators of which were unknown to him, did not constitute accessoryship after the fact. Reports *L. P.* 1855, part 2, page 723.

Concealment by police officer of crime suspected does not make him an accessory.

164. So, where a chokeedar was present at the time of the occurrence [as a spectator], and the magistrate punished him with six months' imprisonment for concealing the crime, the

(a) But, as it was laid down in the *Frimley-grove burglary with murder*, where all parties are equally determined to resort to violence to carry out the illegal object contemplated, the act of one is the act of all; and every one concerned is, in the eye of the law, and also according to common sense and reason, equally guilty.

nor the giving false information.

court held that the course pursued by the magistrate was correct. Reports *L. P.* 1854, part 2, page 608. And where a chokeedar give false information at the thana regarding the cause of death, he was acquitted on the charge of being an accessory after the fact on the ground that he should have been punished under the general laws for neglect of duty(a). Reports *L. P.* 1854, part 1, page 517; and 1856, part 1, page 965.

Same rule applies to zumeendars and others required to give information.

165. Zumeendars also, and others required to give information of occurrences to the police, are liable in the case of concealing knowledge to punishment only for neglect of duty(a). Reports *L. P.* 1854, part 1, page 517.

Privity in any the of magistrate.

166. Privity to murder (and therefore to any other offence) is punishable by a magistrate of his own authority. Reports *L. P.* 1855, part 2, page 529.

Accessory may be found guilty though principal is unknown or acquitted.

167. If the fact of the crime, as murder, be established, there is no reasonable ground why a person should not be convicted on his credible and credited confession of having been privy, although another person charged with the murder be acquitted of it. *N. A. R.* vol. 3, page 97. And in general practice it seems in no way necessary to the conviction of an accessory that the principal should be first convicted or even known.

Conviction of privity cannot be had without proof of the substantial offence.

168. There cannot be a conviction of privity to an offence, the commission of which is not proved in evidence. Thus, where the dead body of the prisoner's wife was found suspended by the neck; and it was proved that he had absconded after fastening the door from the outside, in which state it was found; and the prisoner asserted in his defence that he had absconded because his wife had hung herself; he was acquitted because there was no evidence to prove that the woman had been murdered. Reports *L. P.* 1854, part 2, page 269.

Practice and precedents.

169. A few examples from the old series of reports will suffice to show the practice of the nizamat adawlut in weighing the different degrees of guilt of the various participes criminis;—in many cases principals and accessaries have received the same punishment.

170. Four prisoners charged with murder. The principal was sentenced capitally; one convicted of being an accessory before the fact, and of bringing a false accusation of murder against an innocent person, was sentenced to imprisonment for life; and the remaining two convicted of privity to the crime after the fact, and concealing their knowledge thereof, were sentenced to imprisonment for three years. *N. A. R.* vol. 4, page 235.

171. Four prisoners charged with murder and robbery. One was sentenced as an accomplice to suffer death; another, convicted of privity after the fact, and receipt of the plundered property, to imprisonment for fourteen years; the third, of privity before the fact, to fourteen years; and the fourth of privity after the fact to seven years' imprisonment. *N. A. R.* vol. 3, page 355.

(a) In another trial, when the judge remarked that the magistrate ought to have committed the gomastah and the chokeedar on a charge of concealment of the crime instead of punishing them for neglect of duty, it was observed by the sudder court that it was not "absolutely necessary" to commit them to the sessions on such charge, because they were punishable by the magistrate for neglect of duty. This would seem to imply that such persons might have been legally committed and punished for privity. See Reports *L. P.* 1854, part 1, page 600.

172. Five prisoners charged with murder. One as an accomplice was sentenced to imprisonment for life ; two others, as accessaries after the fact and for receiving part of the stolen property, to imprisonment for fourteen years ; and the remaining two, as accessaries after the fact, and concealing their knowledge thereof, to imprisonment for one year. N. A. R. vol. 5, page 186.

173. Two prisoners charged with murder. The one convicted as an accomplice, and the other as an accessory after the fact, were sentenced to imprisonment for life and seven years respectively. N. A. R. vol. 4, page 5.

174. Nos. 1 and 2 convicted of concealment of murder, and throwing the body of the murdered person into the river ; No. 3 of being an accomplice in the concealment ; and No. 4, a chokeedar, of not giving information after having seen the corpse :—sentence, Nos. 1 and 2 imprisonment for two years ; Nos. 3 and 4 for one year. N. A. R. vol. 4, page 2.

175. Plunder :—the leader was sentenced to imprisonment for twelve years ; the two principals for ten years ; and the other three prisoners, as inferior agents, for seven years. N. A. R. vol. 5, page 1.

176. Murder :—two as principals were sentenced to death ; and another, convicted of instigating, aiding, and abetting, to imprisonment for life. N. A. R. vol. 2, page 5.

177. Murder :—Three as accessaries were sentenced to imprisonment for life ; another, convicted of being present and cognizant of the intent, for fourteen years ; and another, of aiding and abetting, for seven years. N. A. R. vol. 3, page 282.

178. Culpable homicide :—No. 1 convicted of beating the deceased so as to cause death, was sentenced to imprisonment for five years ; and No. 2, of instigating and commanding the beating, for three years. N. A. R. vol. 4, page 129.

179. Affray :—The prisoner though there was no proof that he was actually present, was convicted of having instigated and directed an affray attended with homicide and wounding, and was sentenced to imprisonment in banishment for life. N. A. R. vol. 1, page 8.

CHAPTER III.

OF SUBJECTS RELATING TO THE CONDUCT OF CASES.

SECTION I.

OF JURISDICTION.

General.

180. It has been shown in a former chapter, that the criminal courts established by the East India Company, superseded and supplied the place of those, which formerly existed under the native government; and it follows therefore that all native subjects of the British government as well as all other persons not specially excepted by law, are amenable to those courts for crimes and misdemeanors committed by them within the limits of the presidency of Fort William, except as regards the local jurisdiction of the Supreme Court, and those portions of territory to which, although under British rule, the general regulations have not been extended.

Supreme court.

181. The magistrate of the twenty-four pergunnahs(a) has no jurisdiction or authority whatever in the town of Calcutta, or any places adjacent within the limits of the jurisdiction of the supreme court. Reg. IX. 1793, sect. 3.

By birth of offender.

European British subjects.

182. European British subjects, resident in the mofussil, are not subject to the local authorities in regard to Acts of the Government of India, which do not contain an express declaratory provision to that effect. Const. No. 1296.

Europeans, not British subjects.

183. All Europeans, not British subjects, are amenable to the authority of the criminal courts within whose jurisdictions they may be apprehended and brought to trial, in common with the natives of the country. *Beng. Reg.* II. 1796, sect. 2, cl. 1. *Ben. Reg.* XVI. 1795, sect. 4. cl. 1. *Ced. Prov. Reg.* VI. 1803, sect. 19, cl. 1.

Children of a British subject.

184. The legitimate child of a British father is not amenable to the mofussil courts; but his illegitimate offspring may be so amenable, because illegitimate children are considered as of the same country as their mother. Consts. Nos. 978 and 806.

185. A person born in wedlock at Madras; his father being a German, and his mother a Scotchwoman; was declared by the advocate general to be a British subject, and amenable only to the supreme court. *N. A. R.* vol. 2, page 111.

Courts to preserve their own jurisdiction.

186. The criminal courts are not to proceed to try and sentence a person, whom they may themselves have fair reason from any cause to regard as probably not subject to their

(a) And à fortiori any other magistrate.

jurisdiction, without making all practicable inquiry to satisfy themselves on the point. (a)
C. O. No. 33 of vol. 4.

187. Although the regulations of government contain no specific provision to the effect, it is nevertheless an established principle of law and usage, that persons charged with criminal offences shall (save under special ground of exception) be tried for the same in the criminal courts, within the jurisdiction of which the acts charged may have been committed. Preamble to Reg. VIII. 1822.

By locality of offence.

General principle.

188. A concurrent jurisdiction is vested in the magistrates of the several zillahs in the cases and under the restrictions following; viz. one magistrate may empower his police, under his warrant, to pursue persons charged with crimes or misdemeanors into the jurisdiction of another magistrate; and the latter, as well as all persons having authority or residing in the jurisdiction into which the offenders are pursued, are required to afford every assistance in their power to the pursuing officers for the apprehension of the offenders. But this authority vested in the magistrate extends only to cases, in which the offence has been committed within his own jurisdiction, or where the offender was actually within his jurisdiction at the time when the charge was preferred against him. The magistrate of one zillah cannot issue a warrant for the apprehension of any offender, being in another zillah at the time of the complaint being preferred, for any crime not committed within the limits of his jurisdiction. In such cases the complainant must apply in the first instance to the magistrate of the zillah in which the crime was committed, or in which the offender may reside or be found. *Beng. Reg. XXII. 1793, sect. 16. Ben. Reg. XVII. 1795, sect. 15. Ced. Prov. Reg. XXXV. 1803. sect. 16.*

Concurrent jurisdiction of magistrates in matters of police.

Restrictions.

189. A magistrate cannot apprehend any person charged with an offence committed beyond the limits of his own district, and not actually being or residing therein when complaint was preferred. Const. No. 404.

190. The warrant of any magistrate, or justice of the peace, having jurisdiction in any part of the territories under the government of the East India Company, for the arrest of any person charged with having committed any offence, whether such warrant be issued under the provisions of this Act or not, may be executed within the jurisdiction of any other magistrate, or justice of the peace, having jurisdiction in any part of the said territories, whether in the same presidency or not, upon having a written authority under the hand and seal of the magistrate or justice of the peace, within whose jurisdiction it may be executed, previously endorsed thereon, and which endorsement may be to the following effect:—

Warrant issued by one magistrate may be executed in the jurisdiction of another, if endorsed by the latter

To the nazir [or other officer as the case may be] of the zillah of

This warrant may be executed in the zillah or district of———(describing the zillah or district of the endorsing magistrate or justice of the peace) by any of the officers to whom the same is directed or by———[describing by his name of office the officer to whom a

(a) For further rules regarding the amenability of European British subjects to the Company's courts see Book 8, chapter 1.

similar warrant, issued by the endorsing magistrate or justice of the peace, would be directed]. Act VII. 1854, sect. 5.

No responsibility
ma-
ors-
the warrant.

191. The magistrate endorsing a warrant in pursuance of the provisions of sect. 5 of this Act shall not be liable to any action or other proceeding in consequence of any illegality in the issuing of the warrant; but any magistrate illegally or improperly issuing the same shall be liable for an arrest in pursuance of the endorsement, in the same manner and to the same extent only as if the warrant had been executed within his own jurisdiction. Act VII. 1854, sect. 6.

Person arrested
under such war-
rant how to be dis-
posed of.

192. Upon the apprehension of the supposed offender, if the offence be alleged to have been committed in any part of the territories under the government of the East India Company, he shall be carried before the magistrate within whose jurisdiction the offence shall be alleged to have been committed, and shall be by him dealt with according to law; unless by the warrant the officer be authorized to take bail or security, and such bail or security be given for the appearance of the person accused before the magistrate or justice of the peace of the zillah or district in which the offence shall be alleged to have been committed. Act VII. 1854, sect. 7.

ia-
warrant to send the
depositions, or co-
pies, to magistrate
before whom the
offender is carried.

193. If any person shall, in pursuance of this Act, be carried before a magistrate or justice of the peace, other than the one who issued the warrant; or a magistrate, or justice of the peace, for the time being of the same zillah or district; the depositions and documents upon which the warrant was issued, or copies thereof, to be certified under the hand and seal of the magistrate or justice of the peace of the zillah or district in which the warrant was issued, shall, upon the requisition of the magistrate and justice of the peace before whom such person shall be carried, be forwarded to such magistrate or justice of the peace. Act VII. 1854, sect. 9.

ed by
be of
the place where it
is executed

194. Any criminal process whatever, including summonses, subpoenas, and search warrants, as well as warrants of arrest, issued by any magistrate having jurisdiction in any part of the territories under the government of the East India Company, may be executed within the jurisdiction of any other magistrate having jurisdiction in any part of the said territories, whether in the same Presidency or not, upon having a written authority under the hand and seal of the magistrate, within whose jurisdiction it may be executed, previously endorsed thereon. Provided that no summons or subpoena is to be issued by a magistrate to compel the attendance of a defendant or witness from any place beyond the local limits of his jurisdiction, unless special grounds shall be proved to the satisfaction of the magistrate in support of the application, which grounds are to be recorded before the summons or subpoena is issued. Act XVII. 1856, sect. 1.

tion.

liable for illegality
in the issuing there-
of.

195. The magistrate endorsing any process under this act shall not be liable to any action or other proceeding in consequence of any illegality in the issuing of the process; but any magistrate illegally or improperly issuing the same shall be liable for any act in pursuance of the endorsement, in the same manner, and to the same extent only, as if the process had been executed within his own jurisdiction. Act XVII. 1856, sect. 2.

196. The provisions of Act VII. 1854, and of this Act, do and shall extend and apply to any warrant or other process of any magistrate having jurisdiction in the territories beyond the local limits of the supreme court, which shall be executed within those limits. Provided that, if a magistrate having jurisdiction within those limits shall object to endorse any warrant or other process on account of any apparent defect therein, or for any other cause, he shall refer such warrant or other process to a judge of the supreme court, who shall deal therewith according to the provisions of Act XXIII. 1840. Act XVII. 1856, sect. 3.

Provisions of Act VII. 1854, and of this Act, applicable to process executed within limits of supreme court. But magistrate may refer to judge, if he objects.

197. The word “magistrate,” as used in this Act, includes a joint magistrate, or any person lawfully exercising the powers of a magistrate, and also a justice of the peace. Act XVII. 1856, sect. 4.

Term magistrate means also joint magistrate, and justice of peace.

198. Any magistrate, or justice of the peace, acting under the provisions of this Act, shall issue all necessary warrants, orders, and directions for carrying this Act, and also any order made under it by government, into effect, under his signature and seal, or seal of office, if he shall have a seal of office; and all magistrates and officers acting in pursuance of this Act shall have and exercise the same powers, as if the offence charged had been committed within the zillah or district subject to their jurisdiction; and in cases where the accused may have been held to bail, the magistrate may order the bail-bond to be renewed in such form as may be necessary to carry any order of government into effect; and, if such bail-bond shall not be renewed accordingly, may commit the persons accused to prison for such period as may be necessary to carry such order into effect. Act VII. 1854, sect. 16.

Magistrate to issue warrants &c., and to have the same powers, as if the offence had been committed within his jurisdiction.

199. In case any person arrested under this act shall escape out of custody, he may re-taken in any part of the territories under the government of the East India Company, in the same manner as if he had escaped from custody under process for an offence committed in that part of such territories in which he shall be found. Act VII. 1854, sect. 17.

Prisoner so arrested who escape-

found.

200. The word “magistrate,” as used in this Act, is intended to include a joint magistrate, or any person lawfully exercising the powers of a magistrate, and also a justice of the peace. Words in the singular number are intended to include the plural, and words in the masculine gender to include the feminine. Act VII. 1854, sect. 25.

Meaning of terms used.

201. The government may invest a magistrate with a general concurrent authority as joint magistrate, in any contiguous or other jurisdiction or jurisdictions, or any part thereof. Reg. XVI. 1810, sect. 3.

Magistrate may be vested with a general concurrent authority as a joint magistrate.

202. Nothing in the regulations is to be construed to empower a magistrate to try and pass sentence on, or to commit to the sessions, any person charged with an offence not perpetrated within the limits of his district, except under special authority from government, or the nizamat adawlut. If it should appear, in the course of the investigation of any case, that the act charged was not perpetrated within the limits of his district, but in some other jurisdiction, the magistrate, who commenced the proceedings, or is conducting the investigation, is to send over the parties and witnesses, together with all the proceedings he has held thereon, to the magistrate of the district within which the crime appears to have been com-

Offence perpetrated in district.

Case to be forwarded.

Proviso.

order that the parties may be there dealt with according to law. If, however, the immediate adoption of this course would be attended with great inconvenience to the parties and witnesses, or if there are circumstances which make it advisable that the trial should be brought on or completed at the station, at which the proceedings were instituted, the magistrate may suspend such transfer, and report to the nizamat adawlut. This rule does not refer to offences committed beyond the Company's territories [for which see Act I. 1849, paras. 208, *et seq.*] Reg. VIII. 1822, sect. 2. (a)

203. The government may order the trial of any person charged with a criminal offence to be conducted in a different zillah from that in which the act was perpetrated; and both magistrates shall be bound, on the receipt of orders for the purpose, under the official signature of a secretary to government, to proceed to bring the party to trial at the place fixed therein, in the same manner as if the offence charged had been committed within that jurisdiction. Notice of every such order is to be immediately given to the nizamat adawlut and to the sessions court for the district within which it is intended that the trial should take place; and those courts are bound to proceed, as if the case had been brought on in its proper district. Reg. VIII. 1822, sect. 3, cl. 1.

Nizamut adawlut may alter the venue of a trial as regards the sessions.

204. The nizamat adawlut also may order a trial to be brought on at the station or jail delivery of any magistrate, other than that of the district within which the crime was perpetrated, whenever, either from the magistrate's representation, or other information, it appears to the court, on substantial grounds to be recorded on their proceedings, that such measures will promote the ends of justice, or tend to the general convenience of parties and witnesses without hindrance thereto. An order under the official signature of the register of the court is sufficient authority for the same. Reg. VIII. 1822, sect. 3. cl. 2.

Rule where venue is altered.

205. When a trial is so removed, or is ordered to be carried on in the district where the proceedings were instituted, instead of being transferred to that in which the crime was perpetrated, the magistrates are bound to conform to any instructions they may receive from the authority issuing the orders; and the trial held and sentence passed in consequence, shall be of the same legal effect, as if the whole had been conducted at the station of the district within which the crime was perpetrated. Reg. VIII. 1822, sect. 4.

Extra-regulation

206. The court would not sanction the transfer of a trial to a place, to which the regulations of government did not extend, and which therefore is not contemplated in the above enactment. Const. No. 474.

Disputed jurisdiction.

207. In a case of disputed possession, in which the plaintiff and defendant asserted different jurisdictions, it was held that either magistrate might take up the case, and proceed

(a) In general, all offences must be inquired into as well as tried in the county where the fact is committed. Yet if larceny be committed in one county, and the goods carried into another, the offender may be indicted in either; for the offence is complete in both. Or he may be indicted in England for larceny in Scotland, and carrying the goods with him into England, or vice versa; or for receiving in one part of the United Kingdom goods that have been stolen in another. But for robbery, burglary, and the like, he can only be indicted where the fact was actually committed; for though the carrying away and keeping of the goods is a continuation of the original taking, and is therefore larceny in the second country, yet it is not a robbery or burglary in that jurisdiction. *Blackstone, book 4, chapter 23.*

with the investigation; but that if, in the course of it, it should appear that the lands were situated in the other district, he should refer the parties to the other magistrate, and certify to that officer the proceedings held by him in the case. Const. No. 694.

208. An inhabitant of Lahore carried off a child without the knowledge of inhabitants of the same state, and settled in the British territories, in which he was accused by the parents, and proved to have committed the crime. Held, that the prisoner could not be tried in our courts for child-stealing, but might be committed on the minor charge of retaining in his possession a child knowing him to have been stolen.^(a) Const. No. 1043. Examples of doubtful cases

209. A person was charged with enticing away a boy from Behar, and robbing and attempting to strangle him in Tirhoot. Held that the trial should take place in Tirhoot. N. A. R. vol. 2, page 205.

210. A person on a raft belonging to British subjects, floating down the boundary river, common to the British and a foreign territory, was killed by a shot fired by a person in the foreign territory. Held, that the river must be regarded as within the British dominion; and that the prisoners could be tried in our courts, as the place of the murder was not the place whence the shot was fired, but that at which it took effect. C. O. No. 24, December 8, 1855, *L. P.*

211. The appeal from the order of one magistrate, acting on the requisition of another, should be made to the appellate court to whom the former is subordinate. Const. No. 625. Requisitions from one magistrate to another.

212. All subjects of the British government; and also all persons in the civil or military service of the said government, while actually in such service, and for 6 months afterwards; and also all persons who have dwelt for 6 months within the British territories under the government of the East India Company, subject to the laws of the said territories, who shall be apprehended within the said territories, or delivered into the custody of a magistrate within the said territories wherever apprehended; are to be amenable to the law for all offences committed by them within the territory of any foreign prince or state; and may be bailed or committed for trial, as hereafter provided, on the like evidence as would warrant their being held to bail or committed for the same offence, if it had been committed within the British territories. Act I. 1849, sect. 2. **Foreign territories.**
What classes of persons are amenable to the law for offences in foreign territories.

213. The residence for six months within the British territories need not be for the period immediately preceding the commission of the offence under trial; but may refer to some former period, and the court held that a prisoner was amenable to the law, who had for 12 years possessed landed property within the British territories, and had been in the habit of making monthly visits to it, although he had no actual dwelling house in the village. Reports *W. P.* 1853, part 1, page 148.

(a) Persons accused of the receipt of stolen property may be tried in the district in which the property is found in his possession, or in which the theft occurred, or in which the receipt took place. Act XVI, 1851.

Every such case to be reported to government before trial.

214. The committing magistrate immediately, and before the trial, is to report every such case to the government, and is to obey the orders which he shall receive thereon. Act I. 1849, sect. 3.

be had before one of the established courts.

215. The government may order the trial to be had before one of the established courts of criminal judicature, which would be competent to try the person charged for the offence, if it had been committed within the British territories. Act I. 1849, sect. 4.

216. It is not sufficient that the previous sanction of government has been obtained to the trial of one of the prisoners. An application must be made to government for permission to try each prisoner who is subsequently arrested. Reports W. P. 1853, part 1, page 181.

If in such territory

under the Company's government, the government may order the prisoner to be delivered to such court.

217. When the offence is charged to have been committed in the territory of any foreign prince or state, administered by officers acting under the authority of the East India Company, in which territory a court competent to try the person charged for the offence is established by authority of the governor-general of India in council, the government may order such person to be conveyed in custody out of the British territories for the purpose of delivering him up for trial before such court. Act I. 1849, sect. 5.

Forms of warrant and bail-bond to contain conditions the government.

218. When the person charged is committed, the form of warrant is to specify the commitment to be until the orders of government can be received and acted on; when he is bailed, the form of the bail-bond is to be, in the first instance, to appear before the magistrate on a certain day assigned, allowing reasonable time for receipt of the orders of government, and on such subsequent days as the magistrate from time to time shall require; and if government orders the person charged to be tried within that presidency, the magistrate may cause the bail-bond to be renewed in the usual form to appear and take his trial at the court appointed for the purpose. Act I. 1849, sect. 6.

The special order of government is sufficient authority for the trial.

219. In either case the special order of government is to be deemed full authority, either for the trial and punishment of the person charged within the British territories, or for conveying him in custody out of the British territories as aforesaid. Act I. 1849, sect. 7.

Record.

220. A copy of the magistrate's letter applying for sanction to proceed to trial, and the answer of government, are to be filed with the proceedings. C. O. No. 4 of vol. 2.

Meaning of the term "government."

221. The word "government" as used in the third and following sections of this Act means the governor or governor in council, or other person or persons having supreme executive authority in the presidency or place to which the committing magistrate belongs. Act I. 1849 sect. 8.

The authority of may be a com-

222. The authority hercinbefore given to the government may be also exercised by any commissioner or other person acting in the civil service of the East India Company, to whom the governor general in council shall have delegated authority to receive reports and give orders in cases within this Act. Act I. 1849, sect. 9.

Character cannot be divested.

223. A native born within the British territories is considered a native British subject, although he may have resided in a foreign territory for any number of years. Const. No. 703.

224. If persons, not being native British subjects, come from an independent state the Company's territories, and, having committed robbery, or other heinous crime, escape beyond the boundary, such persons, if given up by the foreign state, can be tried by our courts. Const. No. 533, 1st query.

Foreigners committing offences within the British territories;

225. It would seem that the criminal courts have jurisdiction, although the prisoner has been illegally arrested in a foreign territory by persons in the employ of the British government. It is not necessary to the validity of the trial, that the foreign power should have given him up(a). Reports *W. P.* 1852, page 897.

226. If a person, not a British subject, accused of a crime committed within the Company's territories, be seized within those territories, he can be tried without reference to government. Const. No. 533, 3d query.

227. The Company's courts have no jurisdiction over offences committed by foreigners in a foreign territory. [For the measures to be pursued in such case, see Act VII. 1854, paras. 233 et seq:] N. A. R. vol. 3, pages 101, 218 and 220.

in a foreign territory.

228. A prisoner being an inhabitant of a foreign territory, and charged with an offence committed in that territory, was held not to be amenable to the Company's courts on the ground of his claiming landed property situated within the British territory, of which property however he never had possession. N. A. R. vol. 3, page 151.

229. A person, formerly an alien but coming within the provisions of section 2, Reg. IX. 1822* was forcibly carried off from a village in Bareilly by certain foreigners, and taken to a village situated within the foreign jagheer of Rampore. Seven native British subjects proceeded to the latter village for the purpose of peaceably obtaining his release; but while there, a dispute arose which terminated in an affray attended with murder. It was determined that the foreigners, who forcibly carried off the man from Bareilly, were liable to be tried by the magistrate of that district; and that, with regard to the subsequent affray, the native British subjects concerned therein were also liable to be tried by our courts, if the government, on a reference under Reg. V. 1809*, should think proper to direct such a measure;—but that the foreigners, engaged therein, were liable only to be tried by the laws of the state in which the offence was committed. Const. No. 926.

Example of the liability of native British subjects, and foreigners.

* These enactments have been rescinded by Act I. 1819, the of which substituted

230. It was decided that the Baiza Bace and her followers, when expelled from her own country, were amenable to the laws and regulations of our government, civil and criminal, while they resided within our territories. C. O. No. 195 of vol. 2.

(a) This principle was adopted by the nizamat adawlut in accordance with the ruling of the English courts, which was explained by the advocate general as resting on the following grounds: "First, admitting that the courts are bound to recognise the clear law of nations and not to encourage a violation of it, yet the arrest in a foreign country is not necessarily a violation of the law of nations (see Vattel, book 2, cap. 6); and a court of justice is not the proper tribunal to determine under such circumstances what is or what is not a violation of such law (see Lord Tentenden's judgment in *Ex parte Scott*). Second, the objection is one which the party himself is not entitled, to take (as in *Ex parte Scott*), for non constat that the government whose territory has been violated will complain, or that such country will not obtain sufficient redress otherwise. Third, if the arrest is a violation of the law of nations, it is in the power of the Government to direct their attorney general or other prosecuting officer to enter a *nolle prosequi*, or to relinquish the prosecution, and if the prisoner has been convicted, to release or even to pardon him."

Trial illegal if
government
received.

231. Under the above regulations, the trials of native British subjects, accused of offences committed in a foreign territory, are illegal, if the permission of government to bring them to trial has not been previously obtained. N. A. R. vol. 2, pages 10 and 393.

A trial cannot be
extra re-
provinces
for an offence com-
mitted in a foreign
state without the
sanction of govern-
ment.

232. The rule, that the proceedings on a trial for an offence committed in a foreign territory must be quashed unless the permission of government to bring the accused to trial has been obtained, is applicable to the extra-regulation provinces. N. A. R. vol. 6, page 79.

Mahomedan law.

233. By the Mahomedan law *moostamins* (i. e. persons residing in a foreign country) are justified in making reprisals, by any means in their power, on the sovereign of that country for sums due by himself or his subjects, if he refuse to give redress on a representation of the case. By the regulations quoted, such persons, if subjects of the Company, are liable to be tried and punished for any act of aggression, in like manner as if the offence had been committed within the Company's territories. N. A. R. vol. 1, page 360.

Precedents.

234. Four prisoners convicted of having forcibly carried off property belonging to the Raja of Cachar. *Sentence*, imprisonment and hard labour for seven years. N. A. R. vol. 1, page 360.

235. A prisoner convicted of murder in the Lucknow territory. *Sentence*, death. N. A. R. vol. 2, page 257.

Requisitions for
surrender.

236. Our requisitions for the surrender of refugees, and our compliance with those of our neighbours, are to be confined to the cases of heinous offenders, such as murderers, highway robbers, &c., leaving the privilege of asylum inviolate as regards debtors, defaulters, and civil and petty offenders of every kind. And the practice should be strictly reciprocal. (a) *Orders of government in C. O. No. 194 of vol. 2.*

If requisition be
the execu-
rument of
of Her
domi-
nions; or by any
foreign prince or
Indian
or de-
a person
a he-
inous offence, go-
vernment may di-
rect enquiry.

237. If, requisition be made by, or by the authority of, the person or persons for the time being administering the executive government of any part of the dominions of Her Majesty, to the government of any part of the British territories in India, to deliver up to justice any person accused of having been guilty of any heinous offence in any part of Her Majesty's dominions subject to the government making the requisition, and who shall be, or shall be supposed to be, in any part of the British territories in India subject to the

(a) "In demanding the surrender of criminals you will of course make the necessary distinctions between our own subjects and those of foreign states. If any of our own subjects fly the country after having been guilty of heinous crimes, we may justly demand their surrender to stand their trial in our courts; but, if excesses are committed upon our territory by subjects of foreign states who elude our pursuit by taking refuge in neighbouring independent jurisdictions, then our claim lies for the restoration of the stolen property or its value and indemnity for any loss or injury inflicted; and we may, at the same time call upon the state, whose subjects they are, or in whose territory they are residing, to inflict an adequate punishment upon the offenders. His Lordship considers it of importance that this distinction should be properly understood. The native states always show the greatest unwillingness to deliver over a subject of their own for trial before us; and, by making this the point of our demands, the offender often escapes with impunity, and the losses of our own subjects remain uncompensated: whereas, if we hold the native governments strictly responsible for the conduct of their subjects, we can always realize from them our claims for indemnity, and often oblige them to punish the criminals besides. If this rule is consistently acted upon, the native states will see their own interest in restraining their subjects from committing excesses in our provinces; and they will not be able to evade the responsibility attending such occurrences, as they too often do at present by their alleged inability to apprehend and make over the actual offender." *Government to Agent in the Saugor and Nerbudda territories, December 14th, 1832. See Reports W. P. 1852, page 897.*

government to which the requisition shall be made; or if a similar requisition be made by any foreign prince or state, or by any duly authorized minister or officer thereof, in respect of a person accused of having been guilty of any heinous offence in any part of the territories of such foreign prince or state: it shall be lawful for the government to which the requisition shall be made, if it shall see fit so to do, to issue an order in writing for enquiry into the truth of the charge; and such order shall be sufficient proof of the requisition having been duly made, and a sufficient justification for all acts done in pursuance thereof. Act VII. 1854, sect. 1.

238. The order shall be signed by one of the secretaries to the government; it shall be directed to all magistrates and justices of the peace of the presidency or place under the control of such government; it shall signify that the requisition has been made, shall state the nature of the offence charged, the name or other designation, if the name be not known, of the person accused, and any other description of him that may be thought necessary; and it shall require the magistrates and justices to whom it shall be directed or any of them to inquire into the truth of the charge, and to proceed in pursuance of this Act. Act VII. 1854, sect. 2.

Order for
what to contain.

239. Upon the production of the order to any such magistrate or justice of the peace, he shall have the same powers as if the offence charged had been committed within his jurisdiction. Act VII. 1854, sect. 3.

The production of
the order gives ju-
risdi

240. If the evidence adduced shall in the judgment of the magistrate or justice of the peace be sufficient to justify the apprehension of the person accused for the offence, the magistrate or justice of the peace shall issue his warrant for the apprehension of such person. The warrant shall be issued in the same manner as a warrant for an offence committed within the jurisdiction of the magistrate or justice of the peace issuing it, and shall contain a memorandum stating that the warrant is issued under this Act, and, if the warrant be issued under an order of government, shall also state the fact and specify the government. The memorandum may be to the following effect:—This warrant is issued under Act VII. 1854, and is issued under an order of the Government of ——. Act VII. 1854, sect. 4.

After proof taken
magistrate may is-
sue warrant.

Warrant what to
specify.

241. Upon the apprehension of the supposed offender, if the offence be charged to have been committed in any place not within the territories under the government of the East India Company, the person arrested shall be forthwith carried before a magistrate or justice of the peace of the zillah or district in which he shall be arrested. The magistrate or justice of the peace, before whom the supposed offender shall be carried in pursuance of the last mentioned directions, may proceed in the same manner as in cases in which he has power to commit for trial, or to hold to bail for an offence committed within his own jurisdiction. If, after making as full an inquiry into all the circumstances of the case as the evidence obtainable by the magistrate or justice of the peace within the territories under the government of the East India Company will enable him to make, the evidence adduced shall be sufficient in his judgment to warrant a committal, he shall commit the accused to some place of confinement within his zillah or district, which in the judgment of the magistrate or

¹
he
offence
beyond
territories.

Magistrate how to
proceed:

may commit to
jail;

justice of the peace shall be fit for receiving the prisoner; or if there be no such place, to the jail of the presidency, there to remain until he shall be delivered up or discharged by order of government: if after making such inquiry the circumstances shall not in the judgment of the magistrate or justice of the peace be sufficient to warrant either the committal or the holding to bail of the prisoner, he shall be discharged. Act VII. 1854, sect. 7.

Prisoner may be admitted to bail in bailable cases.

Bail bond what to contain.

242. If the offence charged be one committed out of the British territories in India, which if committed within the jurisdiction of the magistrate would be bailable, the magistrate or justice of the peace may proceed accordingly, and may discharge the prisoner upon his giving the necessary bail. The recognizance or bail-bond in such case shall be for the appearance of the accused before the magistrate or justice of the peace for the time being of the zillah or district in which the recognizance shall be taken, on a certain day to be named therein, allowing reasonable time for receiving the orders of government, and on such subsequent days as the magistrate or justice of the peace for the time being shall from time to time appoint. Act VII. 1854, sect. 8.

Government is to to having over place of arrest.

243. If the warrant be issued under an order of government, and executed in a presidency or place not under the government issuing the order, notice of the arrest shall be forthwith communicated to such government, who shall forward the requisition and any documents relating thereto in their possession to the government having jurisdiction over the place of arrest, and such last-mentioned government shall have the same powers as the government who made the order. Act VII. 1854, sect. 9.

If the person was previously convicted, and escaped before execution of sentence, he may be committed without further proof.

244. If the person accused of the offence mentioned in any such order of government be proved to have been convicted and sentenced for the offence charged by a court of justice in any part of Her Majesty's dominions in which the offence is alleged to have been committed, and to have escaped before such sentence was carried into execution; the magistrate or justice of the peace, upon proof of such conviction and sentence, may issue a warrant for the apprehension of the person accused, and he may be arrested and committed in manner aforesaid without further proof, unless such person shall prove that the conviction or sentence has been reversed or annulled. Act VII. 1854, sect. 10.

If offence was beyond the territory of the magistrate or justice of the peace.

245. If it appear to the magistrate or justice of the peace, before whom any prisoner shall be carried under this Act for an offence alleged to have been committed in any territories not under the government of the East India Company, that particular circumstances exist which render it advisable that the case should be investigated by the magistrate or justice of the peace of a zillah or district nearer to such territories, he shall forthwith report the case and the particular circumstances to the government, who shall order such magistrate or justice of the peace either to proceed with the case himself, or to send the case to be investigated by the magistrate or justice of the peace of any other district to be named by the government. In the latter case the prisoner shall be sent, or if the offence be bailable shall give bail, to appear before such last-mentioned magistrate or justice of the peace, who shall have power to deal with the case as if he had issued the warrant under which the prisoner shall be arrested, and all the depositions and documents shall be forwarded to such

magistrate or justice of the peace. The order of government shall be a sufficient justification for all persons acting in pursuance thereof. Act VII. 1854, sect. 11.

246. The government, by whom any order under section 1 of this Act shall be made, may, if they think fit so to do, direct that copies of any depositions or exhibits, which shall have been laid before them and shall have been certified to their satisfaction to be true copies of depositions or exhibits made or produced before a competent judicial officer of the territories in which the offence is alleged to have been committed, may be received in evidence of the criminality of the person accused, and such direction shall be sufficient authority for receiving the same in evidence. Act VII. 1854, sect. 12.

of depositions taken in territory be received in evidence.

247. The magistrate or justice of the peace, after committing the accused or holding him to bail as aforesaid, for any offence committed out of the territories under the government of the East India Company, shall forthwith report the result of his proceedings to the government to which he is subordinate, together with any remarks which he may deem necessary or proper to make upon the whole case. He shall also forward with such report a copy of all depositions and documents used before him. Act VII. 1854, sect. 13.

If offence committed beyond Company's territories magistrate arresting to report to government.

248. Upon receipt of the report, and after examining the case, the government may, by order in writing to be signed by the secretary to the government, order the accused either to be discharged, or to be held to bail to appear in such court or place and at such time or times as the government may think fit, or to be delivered up to some person authorised by the government or officer making the requisition to receive and take charge of him. In cases falling within the provisions of Act I. 1849,* the government may order the person accused to be tried under that Act. Act VII. 1854, sect. 14.

Government may order the prisoner to be given up;

or to be tried.
* *v. para. 212.*

249. If ordered to be delivered up, the person to whom the accused shall be ordered to be delivered shall not have the custody or charge of him so long as he shall remain in any part of the territories under the government of the East India Company; but the accused shall be conveyed in custody through such last-mentioned territories, towards the territories in which the offence shall be alleged to have been committed, in the same manner as a prisoner sent from the station of one district to that of another; and as soon as he shall have been conveyed to the frontiers of the territories under the government of the East India Company, he shall be delivered over to some person authorized by the government making the requisition to receive and take charge of him. If no such person shall attend to receive the prisoner, the latter shall be taken before the nearest magistrate, who may order him to be discharged out of custody, and may provide him with such means of returning to the place where he was apprehended, or so near thereto as he may desire, as such magistrate may think necessary and suitable to his station in life. Act VII. 1854, sect. 15.

Such prisoner to be delivered up on the frontier.

If no one takes delivery, nearest magistrate may release.

250. Any magistrate or justice of the peace acting under the provisions of this Act shall issue all necessary warrants, orders, and directions, for carrying this Act, and also any order made under it by the government, into effect, under his signature and seal, or seal of office, if he shall have a seal of office; and all magistrates and officers acting in pursuance of this Act shall have and exercise the same powers as if the offence charged had been

within his jurisdiction

committed within the zillah or district subject to their jurisdiction; and in cases where the accused may have been held to bail, the magistrate may order the bail-bond to be renewed in such form as may be necessary to carry any order of government into effect; and, if such bail-bond shall not be renewed accordingly, may commit the person accused to prison for such period as may be necessary to carry such order into effect. Act VII. 1854, sect. 16.

Prisoner so arrested who escapes may be re-taken anywhere, as if for an offence committed where he is found.

251. In case any person arrested under this Act shall escape out of custody, he may be re-taken in any part of the territories under the government of the East India Company, in the same manner as if he had escaped from custody under process for an offence committed in that part of such territories in which he shall be found. Act VII. 1854, sect. 17.

If warrant be issued in any part of Her Majesty's dominions beyond the Company's territories, magistrate may act on its production or order.

252. If a warrant be issued, in any part of Her Majesty's dominions not under the government of the East India Company, for the arrest of any person for any heinous offence alleged to have been committed therein, or for the arrest of any person for any heinous offence of which he may have been convicted by a court of competent jurisdiction in any such part of Her Majesty's dominions, any magistrate or justice of the peace within the territories under the government of the East India Company may, upon the production of such warrant and proof of the signature of the officer signing it, and of his authority to issue the same, and without any further proof and without any order of government, issue his warrant for the apprehension of the person accused; and after his apprehension may proceed to commit or hold him to bail in manner aforesaid, and to take such other proceedings as aforesaid as the case may require; but the person accused shall not be delivered over as aforesaid without an order of government. The government in such case shall have the same powers as if the proceedings had been taken in pursuance of an order of government issued under this Act. Act VII. 1854, sect. 18.

Powers of government in such

Persons accused of any offence in the Company's territories may be apprehended by magistrate, if necessary, without order; but may not be delivered up, without order of government.

Powers of government.

253. In cases in which the immediate apprehension within the British territories in India of any person accused of having committed any heinous offence mentioned in section 21 of this Act out of such territories shall, in the judgment of a magistrate or justice of the peace having jurisdiction in any part of such territories in which the person accused shall be found, be necessary for the ends of justice, the person accused may without an order of government be apprehended or proceeded against in the same manner as for an offence charged to have been committed in the place where the person accused shall be found; and after his apprehension he may be committed or held to bail in manner aforesaid, and such other proceedings as aforesaid may be taken as the case may require; but the person accused shall not be delivered up without an order of government. The government in such case shall have the same powers as if the proceedings had been taken in pursuance of an order of government issued under this Act. Act VII. 1854, sect. 19.

If prisoner be delivered up, or to trial within two months, he shall be committed to the principal court of original jurisdiction in criminal cases in the district in which he shall be imprisoned, upon application by or on behalf of the prisoner, to order him to be discharged out of custody, either upon giving such bail as the court may order, or without bail.

254. If any person imprisoned under this Act shall not either be delivered up or discharged or brought to trial within two calendar months after his committal, it shall be lawful for the principal court of original jurisdiction in criminal cases in the district in which he shall be imprisoned, upon application by or on behalf of the prisoner, to order him to be discharged out of custody, either upon giving such bail as the court may order, or without bail,

unless sufficient cause shall be shown to the court why such discharge ought not to be ordered. Provided that no such order shall be made until after notice of the application or of the intention to make the same shall have been given to government or to the secretary or one of the secretaries thereof. Act VII. 1854, sect. 20.

255. The words heinous offence in this Act shall be deemed to include treason against Her Majesty committed in any part of Her Majesty's dominions, murder, attempting to murder, rape, great personal violence, maiming, dacoity, thuggee, robbery, burglary, knowingly receiving property obtained by dacoity, robbery, or burglary, cattle-stealing, breaking and entering a dwelling-house and stealing therein, arson, setting fire to a village, house, or town, forgery or uttering forged documents, counterfeiting current coin, knowingly uttering base or counterfeit coin, perjury, subornation of perjury, embezzlement whether by public officers or other persons, and being an accessory to any of the above-mentioned offences. Act VII. 1854, sect. 21.

Term
offence'
clude.

256. The said words heinous offence in this Act shall also be deemed to include any offence, for which by any treaty in force between Her Majesty or the East India Company, and any foreign prince or state, Her Majesty or the East India Company, shall, at the time of making any requisition as aforesaid, be bound to deliver up offenders to the foreign prince or state making the same; and any other offence which, in the judgment of the government to whom the requisition shall be made, shall be serious or aggravated, and for which the person accused cannot be tried within the territories under the government of the East India Company under the provisions of Act I. 1849. Act VII. 1854, sect. 22.

May include
other offences.

257. If by any such treaty Her Majesty or the East India Company shall be bound to deliver up to any foreign prince or state any person liable to be proceeded against by the laws of such foreign prince or state, in any case not expressly provided for by this Act, or in any manner other than that provided by this Act, it shall be lawful for the government of any part of the territories under the government of the East India Company, in which such person may be found, upon requisition made by or on the part of such foreign prince or state, to adopt such proceedings for carrying such treaty into effect, and for the surrender of such person, and for making any preliminary inquiry into the charge contained in the requisition, as it shall think fit, and any such order of the government in writing, under the hand of one of the secretaries of such government, shall be a sufficient authority and justification for all acts to be done in execution thereof. Act VII. 1854, sect. 23.

If
be bound by treaty
in any case not
provided for by this
Act, it may issue
such orders as it
thinks fit.

258. Unless where a contrary intention appears from the context, the word government, as used in this Act, shall be deemed to mean and include the governor general of India in council, or the person or persons administering the executive government in any presidency or place within the British territories in India. The words British territories in India shall include any part of the territories under the government of the East India Company. The word magistrate, as used in this Act, is intended to include a joint magistrate, or any person lawfully exercising the powers of a magistrate, and also a justice of the peace. Words in the singular number are intended to include the plural, and words in the masculine gender to include the feminine. Act VII. 1854, sect. 25.

Meaning of terms
used in this Act.

**Naturaliza-
tion of aliens.**
resident may
be natura-

259. Any person whilst actually residing in any part of the territories under the government of the East India Company may present a memorial to government, praying that the privileges of naturalization may be conferred upon him. Act XXX. 1852, sect. 1.

Particulars to
be stated in his
memorial.

260. Such memorial is to state to the best of the knowledge and belief of the memorialist, his age, place of birth, place of residence, profession, trade or occupation, the length of time during which he has resided within the said territories, that he is settled in the said territories, or is residing within the same with intent to settle therein, and any other particulars which the government may require to be stated therein; and such memorial shall be in writing and signed by the memorialist, and accompanied by an affidavit sworn by him, verifying the truth of the statements contained therein. Act XXX. 1852, sect. 2.

Government may
require further evi-
dence.

261. The memorial shall be considered by the government to whom it shall be presented, who shall inquire into the circumstances of the case, and may require such evidence either by affidavit or otherwise as they may deem proper, in addition to the before-mentioned affidavit of the memorialist, to prove the truth of the statements contained in such memorial. Act XXX. 1852, sect. 3.

Government may
sue certificate of
naturalization.

262. The government may, if they shall think fit, issue a certificate in writing reciting such of the contents of the memorial as they may consider to be true and material, and granting to the memorialist all the rights, privileges, and capacities of naturalization under this Act, except such rights, privileges, or capacities, if any, as may be specially excepted in such certificate. Act XXX. 1852, sect. 4.

Copy of certifi-
cate to be filed in
office appointed.
List to be kept.

263. The certificate shall be delivered to the memorialist; and a copy or duplicate thereof, together with the memorial upon which the same shall be obtained, and any affidavit which may accompany such memorial or be produced in support thereof, shall be filed by the secretary to the government, or such other officer as the government may direct; and such secretary or officer shall keep an alphabetical list of all persons who may be naturalized by such government. Act XXX. 1852, sect. 5.

If memorial be
false, certificate may
be cancelled.

264. If any material statement contained in such memorial shall be false, the government may, if they think fit, by an order in writing, declare the certificate issued upon such memorial to be null and void to all intents and purposes, except such purposes, if any, as may be specially excepted in such order; and from and after such order all the rights, privileges and capacities derived through such certificate shall cease to exist. Act XXX. 1852, sect. 6.

Fees to be paid.

265. Such fees shall be payable in respect of the proceedings hereby authorized as shall be fixed by the government. Act XXX. 1852, sect. 7.

Privileges obtain-
ed by naturaliza-
tion.

266. Upon obtaining such certificate, and taking and subscribing the oath as hereinafter prescribed, the memorialist shall, within the said territories under the government of the East India Company, be deemed a natural born subject of Her Majesty as if he had been born within the said territories; and shall be entitled within the said territories to all the rights, privileges, and capacities of a subject of Her Majesty born within the said territories,

except such rights, privileges, and capacities, if any, as may be specially excepted in such certificate. Act XXX. 1852, sect. 8.

267. Nothing in this Act contained is to be construed so as to deprive the courts of the East India Company of jurisdiction over any such naturalized person, or to give to the courts of Her Majesty any jurisdiction over any such person not otherwise subject to such jurisdiction. Act XXX. 1852, sect. 9.

Restriction of privileges.

268. Within sixty days from the day of the date of such certificate the memorialist named in such certificate shall take and subscribe the oath contained in the schedule annexed to this Act. Act XXX. 1852, sect. 10.

Oath to be taken,

269. Such oath, as well as any other oath or affidavit required by this Act, may be administered by any magistrate or justice of the peace within the limits of his jurisdiction, or by any other person to be appointed for that purpose by government, and the person who shall administer the oath mentioned in the schedule to this Act annexed shall grant to the memorialist a certificate in writing of his having taken and subscribed such oath, and of the date of his taking and subscribing the same, and shall forward to the government the oath so taken and subscribed together with a duplicate of such certificate, which oath and duplicate certificate shall be filed and kept with the memorial. Act XXX. 1852, sect. 11.

before a magistrate or justice of the peace or other person appointed.

270. The word government in this Act shall be deemed to mean the person or persons for the time being lawfully entitled to administer the executive government in that part of the said territories in which the memorialist shall reside at the time of presenting such memorial. The word magistrate shall include any person lawfully exercising the powers of a magistrate; and words denoting the masculine gender shall include the feminine. Act XXX. 1852, sect. 12.

Meaning of terms used in this Act.

271. In every case in which the word oath or affidavit is used in this Act, an affirmation to the same effect as the oath or affidavit required shall be sufficient in cases where the person required to make such oath or affidavit shall be a person allowed by law to affirm in civil cases; and in every such case such affirmation shall be made before the person authorized to administer the oath, and the word oath or affidavit wherever used in this Act shall include such affirmation. Act XXX. 1852, sect. 13.

Affirmation sufficient in cases in lieu of oath.

272. I, A. B., of (*here state the description of the party*) do swear (*or, being one of the persons allowed by law to affirm in civil cases, do affirm,*) that I will be faithful and bear true allegiance to the Sovereign of the United Kingdom of Great Britain and Ireland, and of these Territories as dependent thereon, and that I will be true and faithful to the East India Company. Act XXX. 1852, schedule.

Form of oath.

SECTION II.

OF JURISDICTION IN MILITARY CANTONMENTS, AND OF OFFENCES
COMMITTED BY PERSONS ATTACHED TO THE ARMY.**Canton-
ments.****Limits of,****Persons residing
in.**

273. By sections 4 and 5, Regulation III. 1809, it was ordered, that the limits of cantonments, including the military bazars attached thereto, at which any division or corps of the army, or any considerable detachment of troops not being less than half a battalion, were quartered, should be fixed by the commanding officer in concert with the magistrate. This rule applied to all cantonments whether situated at the place of residence of the magistrate, or in any other part of the district. Sections 5 and 6, Regulation XX. 1810, repeated and re-enacted these orders, and required plans of the cantonments and bazars to be prepared in quadruplicate, and one copy to be deposited in the cutcherry of the magistrate, and another at the head-quarters of the station. The same regulation also required (vide sections 7, 8, 9, 10, and 26) that the names of persons trading for the supply of the troops in the station bazars, and bazars of corps, should be registered; but the registry was to be with their own consent; and no person was liable to be dispossessed by commanding officers of land or houses, situated within the bazars, although he should refuse to be registered, or be discharged from the registry.

274. A magistrate is not competent, under the provisions of Regulation XX. 1810, to pull down houses in a military cantonment, and eject their possessors, merely on the requisition of the officer commanding the station. Const. No. 1119.

**Land belonging
to government.**

275. Where land within a military cantonment is the property of government, it rests entirely with the officers commanding to give directions regarding its disposal. Reports, *L. P.* 1852, part 1, page 679.

**Police in sudder
bazar.**

276. The support of the police, and the maintenance of the peace within the limits of the cantonments and military bazars, are vested in the commanding officers; who are required to adopt measures, by means of the troops, for preventing the commission of crimes within such limits, and for the apprehension of persons guilty of such acts. Reg. III. 1809, sect. 2, cl. 1.

**Police in bazars
of corps.**

277. The charge of the police, over persons registered as attached to bazars of corps, is vested in the commanding officers of such corps, so long as such persons are bonâ fide carrying on the occupation in respect of which they are so registered. Reg. XX. 1810, sect. 21.

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thereof.**

278. All persons serving with any part of the army, and receiving public pay drawn by any officer in charge of a public department appertaining to the army, whether lascars, magazine men, kalassies attached to magazines or any other department or establishment, native doctors, writers, bhisteas, puckallies, syces, grass-cutters, mahouts, surwans, or other subordinate servants attached to public cattle, bildars, artificers, or in any other capacity, are (provided they are borne upon the fixed establishment of the department in which they are

employed, and not otherwise) subject to be tried by a court martial for all breaches of duty and for all disorders and neglects to the prejudice of good order and of the local regulations established by the commanding officer. Reg. XX. 1810, sect. 2.

279. Menial servants of officers within the precincts of any cantonment, garrison, military station, or military bazar, although not in the receipt of public pay, are subject to the local regulations of such cantonment, &c.; and are liable to be tried by court martial for any breach thereof. Reg. XX. 1810, sect. 4.

Menial servants
of officers ditto.

280. Persons registered as attached to the station bazar, or the bazar of a corps, are subject, while so attached, to the local regulations of such bazar; and are liable to be tried by court martial for any breach thereof. Reg. XX. 1810, sects. 8 and 12.

Persons register-
ed in bazars ditto.

281. If any retainer of the army, of the description mentioned in section 2 of this regulation, or any menial servant of an officer, or any person registered as attached to the sudder or station bazar, is charged with the commission of an inconsiderable assault or affray, or other act immediately tending to a breach of the peace and good order of any garrison, cantonment, or bazar, within the limits thereof, as described in the plans mentioned above,—he is to be tried by a native court martial. Reg. XX. 1810, sect. 15.

**Offences
committed
within can-**

Retainers, menial
servants of officers,
and persons regis-
tered in bazars,
liable to court
martial for petty
assaults, &c.

Ditto for petty
thefts.

282. If any such person is charged with having committed a petty theft (i. e. theft without violence and outrage, and not exceeding 100 rupees) within the limits of the cantonment or bazar, such charge is to be tried by a native court martial. Reg. XX. 1810, sect. 16.

283. If any such petty offence is committed within such limits by any person not being such retainer of the army, or the menial servant of an officer, or registered as attached to the bazar, the commanding officer is to cause the offender, if found within such limits, to be arrested and sent to the magistrate, who is to inquire into the facts, and punish the offender, in the same manner as in other cases of petty offences cognizable by the magistrate under existing regulations. Reg. XX. 1810, sect. 17.

Any other person
committing such
offence to be made
over to magistrate.

284. In all cases of crimes committed within the limits of garrisons, cantonments, or military bazars, which are not cognizable before a court martial in the manner described above, the offender, whatever be his description, if found within the limits, is to be arrested by the commanding officer, and delivered over to the magistrate. Reg. XX. 1810, sect. 18. Reg. III. 1809, sect. 2, cl. 3.

In the case of all
other crimes every
offender to be made
over to magistrate.

285. The same rules apply to all such petty offences, committed by persons attached to the bazars of corps: provided that when such offences are committed at the distance of above one coss from the stations of the corps or from its actual position on a march, and the offender is taken in the fact, the magistrate has a concurrent jurisdiction, and may proceed against the offender as in other cases, or, at his discretion, remit him to the commanding officer to be tried by court martial. Reg. XX. 1810, sect. 21.

286. By the above rules the military authority in cantonments extends only to petty offences committed within the limits of a cantonment by a person, who is a retainer of the army, the servant of an officer, or registered as attached to the bazar; the more grievous offences are cognizable by the magistrate exclusively, by whomsoever perpetrated, whether within or without the limits of the cantonment. Const. No. 392.

Limits of

tion.
Construction of
the

Example.

287. A sepoy belonging to a detachment at Buxar, having shot and killed a havildar, while mounting guard at the fort gate, held that the case was cognizable by the civil authorities. Const. No. 760.

Offences not committed by officers and soldiers.

288. In all places within the jurisdiction of any civil judicature, (native) officers and soldiers accused of capital crimes, or of violence, or of offences against person or property, punishable by such civil judicature, are to be delivered over to a magistrate to be proceeded against according to law. And all officers and soldiers are required to assist the officers of justice in apprehending and securing any person so accused. Act XX. 1845, article 111.

Military offences committed by military guards in charge of convicts.

289. The provisions of the regulations which regard guards guilty of neglect of duty, are not applicable to military guards from provincial battalions, or from any regular corps of the army. If any such guard is guilty of wilful neglect in guarding the prisoners under his charge, or of connivance at the escape of a prisoner, or of any other act of a criminal nature in the discharge of his duty, the magistrate is to deliver him over to his commanding officer with a charge in writing, that he may be tried by a court martial. *Beng. Ben. Reg. XI. 1806, sect. 10, cl. 2. Ced. Prov. Reg. VIII. 1805, sect. 14, cl. 5.*

Application and restriction of the

290. The above rule is to be observed, with respect to any other offence involving a breach of military duty, and properly cognizable by courts martial;—but does not apply to any criminal charge against such guards or other sepoys, which does not involve a breach of military duty, and the cognizance of which therefore appertains to the civil courts. *Beng. Ben. Reg. XI. 1806, sect. 10, cl. 3. Ced. Prov. Reg. VIII. 1805, sect. 14, cl. 6.*

Rule, when case is made over to the magistrate.

291. The commanding officer of a military cantonment, when required to make over the offender to the magistrate, is not competent to take the information of the prosecutor and witnesses on oath. Const. No. 1044.

Jurisdiction of magistrate in cantonments.

When a complaint against any resident in cantonments may be made to the magistrate.

292. Any person, having a charge or complaint to prefer against any individual resident in any cantonment or military bazar, who has not been already apprehended by the persons entrusted therein with the support of the police, or if the charge or complaint is of a nature not to authorize those officers, under the above rules to interfere in it,—may prefer his complaint directly to the magistrate, who is required to proceed with respect to it, under the general regulations, in the same manner as if the offence had been committed in any other part of his jurisdiction. *Reg. III. 1809, sect. 3, cl. 1.*

Power of civil authorities to serve processes in military stations.

293. Under the foregoing clause the magistrates are of course empowered to issue their warrants and summonses against any persons residing in the cantonments and military bazars, in the same manner as if such persons resided in any other part of their jurisdiction;—and the commanding officers are required to afford every protection to the officers of the civil authorities in the discharge of the duty entrusted to them, whether any special application has been made to them for such aid or support, or otherwise. *Reg. III. 1809, sect. 3, cl. 2.*

Arrest.

294. In all cases in which it is necessary to execute any process of arrest, criminal or civil, within the limits of a garrison, cantonment, military station, or military bazar, (the process of the supreme court only excepted) the officers entrusted with the execution of such

process of arrest are in the first instance to carry it to the commanding officer, or in his absence to the senior officer actually present: and such officer, upon such process being produced to him, is to back the same with his signature, and is forthwith to use his utmost endeavours to cause the person named in such process to be discovered, and, if within the limits of the garrison &c., to be arrested and delivered to the civil officer. But the above does not prevent the service by the civil officer, in the usual way, of summonses, subpoenas, or other process of mere citation without arrest. Reg. XX. 1810, sect. 19.

Processes short of arrest.

295. If within any military cantonment, or within any limits around the same to which the provisions of this Act shall be extended by an order of government to be publicly notified, any person not amenable to articles of war, or any sutler or camp follower, shall knowingly barter, sell, or supply, or offer or attempt to barter, sell, or supply, any spirituous liquor, wine, or intoxicating drug, to or for the use of any European soldier, or to or for the use of any European or Eurasian being a camp follower or a soldiers' wife, without a written license from the officer commanding at the station, or from some person having sufficient authority from the commanding officer to grant such license, the person so bartering, selling, or supplying, or offering or attempting to barter, sell, or supply, such spirituous liquor, wine, or intoxicating drug as aforesaid, shall be liable, on conviction before a magistrate, to a fine not exceeding fifty rupees, or in the discretion of the magistrate to imprisonment, with or without hard labour, for any period not exceeding one calendar month. Act XVIII. 1853, sect. 1.

Sale of spirits in cantonments.

Any person not amenable to articles of war, or camp follower, selling &c., spirits, &c., without licence, to or for the use of soldiers in cantonments liable to fine or imprisonment.

296. If any person convicted of an offence under section 1 of this Act, shall be convicted under that section of an offence subsequently committed, he shall be liable to a fine not exceeding one hundred rupees, or to imprisonment, with or without hard labour, for any period not exceeding three calendar months; and in such case any spirituous liquor, wine, or intoxicating drug, within such cantonment, or limits, which at the time of the commission of such subsequent offence shall belong to, or be in the possession of such person, shall without further proof, be deemed to be in the possession of such person for the purpose of being supplied to European soldiers contrary to the provisions of this Act, and shall be liable to be seized and confiscated. Act XVIII. 1853, sect. 2.

In the case of a second conviction, liable to increased fine or imprisonment, and spirits may be confiscated.

297. If any camp follower, or military pensioner, or the wife or widow of any soldier, camp follower, or military pensioner, shall within such cantonment or limits remove, convey, or have in his or her possession, any quantity of spirituous liquor, or wine exceeding one seer or quart, without a permit, to be signed by the officer in command, or such other officer as may be appointed by him to grant permits under this Act; every such person shall be liable upon conviction to a fine not exceeding fifty rupees, and for any subsequent offence to a fine not exceeding one hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding three calendar months. Act XVIII. 1853, sect. 3.

Camp &c., having more than one seer in cantonment, liable to punishment.

298. Section 3 of this Act shall not apply to any liquor brought into a cantonment for the private use of any commissioned officer. Act XVIII. 1853, sect. 4.

299. If any person, subject to the provisions of this Act, shall be found committing any offence contrary thereto, any police officer, authorized under this Act, may immediately, and convey before

without warrant, arrest such person, and also seize any spirituous liquor, wine, or intoxicating drug, together with any vessel containing the same, and any thing used for the purpose of removing, conveying, or concealing the same, which may be found in his possession; and shall thereupon, without delay, take such person, together with the things so seized, before a magistrate or other officer having jurisdiction to punish the offender. Act XVIII. 1853, sect. 5.

Persons obstruct-
e, how pu-

300. Any person, who shall obstruct any police officer in making any arrest, or seizure, under this Act, and any police officer, who shall not, without unreasonable delay, take the person, or thing, so arrested or seized, before a magistrate, or other officer having jurisdiction to punish the offence, shall be liable, on conviction before a magistrate, to a fine not exceeding one hundred rupees. Act XVIII. 1853, sect. 6.

arresting
robable

301. Any police officer, who, under color of this Act, shall, without probable cause, make any arrest or seizure, without a warrant, shall on conviction before a magistrate, be liable, to a fine not exceeding one hundred rupees, which fine or any part of it may be ordered by the magistrate to be paid to the person aggrieved. Act XVIII. 1856, sect. 7.

Police must have
general or special
authority from com-
manding officer.

302. No police officer shall be competent to act under the provisions of section 5 of this Act, unless he shall have a general, or special authority so to do, granted to him in writing by the commanding officer or other officer empowered by him to grant the same, or by the officer in the immediate charge of the police. Act XVIII. 1853, sect. 8.

Magistrate may
confiscate liquors,
&c., and vessels,
&c.

303. In case of a conviction for any offence under this Act, the convicting magistrate may adjudge any liquor, wine, or intoxicating drug, in respect of which the party shall be convicted, and any other spirituous liquor, wine, or intoxicating drug, which shall be found in his possession at the time of committing the offence, and any vessel containing the same, together with any thing used for the purpose of conveying, removing, or concealing the same, or any part thereof, to be confiscated; and such magistrate may order the whole, or any part, or parts of any fine imposed under this Act, to be paid, as soon as the same shall be realized, to the person upon whose information such conviction shall take place, or to the officer who shall have apprehended the offender, or seized any of the goods adjudged to be confiscated. Act XVIII. 1853, sect. 9.

Fines under this
law may be given to
informer, or officer
seizing.

Anything seized
may be detained un-
til final decision.
If acquitted, things
to be restored.

304. A magistrate may order any thing seized under the provisions of this Act, in respect of which any person shall be charged with an offence, to be detained until the person in whose possession the same shall have been seized shall be convicted, or acquitted of the offence charged. If the person shall be acquitted, the things so seized shall be restored: if he shall be convicted, such of the things only, if any, as shall not be adjudged by a magistrate to be confiscated, shall be restored; the remainder shall be dealt with as confiscated. Act XVIII. 1853, sect. 10.

305. No appeal shall lie from any order or conviction under the provisions of this Act. Act XVIII. 1853, sect. 11.

European British
subjects.

306. European British subjects shall be amenable to the jurisdiction of a magistrate for any offence against the provisions of this Act. Act XVIII. 1853, sect. 12.

307. This Act shall not apply to the sale, or supply of any article for medicinal purposes, by recognized medical practitioners, chemists, or druggists. Act XVIII. 1853, sect. 14. Not to apply to things used for medicinal purposes.

308. In the construction of this Act the word cantonment shall include a fortress, or garrison, or military bazar station; the word soldier shall include any non-commissioned officer; the word magistrate shall include a joint magistrate, or any person lawfully exercising the powers of a magistrate, or a justice of the peace; the words spirituous liquor shall include toddy in a state of fermentation, or after it has been fermented. Words in the singular number shall include the plural, and words denoting the masculine gender shall include the feminine. Act XVIII. 1853, sect. 15. Meaning of terms used.

309. This Act shall not come into operation before the 1st day of January 1854, and shall not take effect within any limits around a cantonment, which shall be specified in any order of government, before the expiration of one month from the date of the notification of such order: and any order for extending the provisions of this Act to any limits around a cantonment may from time to time be varied, altered, or suspended by government. Act XVIII. 1853, sect. 16. Act not to take effect at cantonment.

310. Whenever a witness in attendance before a general court martial or other military court (for the trial of European British subjects) duly authorized to administer an oath, refuses to be sworn, and the court is of opinion that the testimony of such witness is essential, and that there is no sufficient reason to exempt him from taking the oath, the judge advocate, or other officer conducting the proceedings of the court, is authorized to forward such witness with a written statement to the magistrate, within whose jurisdiction the court is held;—and the magistrate is to make such enquiries into the case as may satisfy him, that the witness ought or ought not to be exempted from taking an oath under the provisions of Reg. L. 1803. In the latter case, he is to proceed in the same manner as if the refusal to give evidence on oath had taken place in his own court;—in the former, he is to certify the same to the judge advocate general, or other officer above referred to, and is not to impose any penalty on such witness. Reg. XX. 1825, sect. 4. **Military Courts.**

Court martial for trial of European British subjects.

311. Any person not amenable to the articles of war (for the native army), who, having been summoned upon any court martial, refuses or neglects to attend, or who attending refuses to be sworn, or to make affirmation, or to answer any lawful question, or gives such testimony as, if given in a criminal court, would render him guilty of perjury, or who induces any other person so to offend, is to be delivered to a magistrate to be proceeded against according to law. Act XX. 1845, article 62. Witness refusing or to be committed to the trial of natives.

312. Witnesses omitting to attend (courts of requests for the native army), refusing to give evidence, or committing perjury, and persons suborning witnesses to commit perjury, are to be tried and punished, if not amenable to articles of war, in the nearest of the Company's courts for the administration of criminal justice (whether such court have ordinarily jurisdiction over such person in criminal matters or not), in like manner as if such offence had been committed in regard to any trial before such nearest court. Act XI. 1841, sect. 6. Ditto before a court of requests for the native army

Contempt of
court martial for
trial of a native of-
ficer or soldier.

313. Any person using menacing or disrespectful words, signs, or gestures, in the presence of a court martial (held on a native officer or soldier) then sitting, or causing any disturbance or riot, so as to disturb their proceedings,—if not amenable to the articles of war (for the native army), is to be delivered over to a magistrate to be proceeded against according to law. Act XX. 1845, article 63.

Ditto of court of
requests for the
native army.

314. Any person, civil or military, European or native, using menacing words, signs, or gestures, or otherwise interrupting (whether being personally present or not) the proceedings of any military court of requests (for the native army), is punishable, if not amenable to articles of war, in the nearest of the Company's courts for the administration of criminal justice (whether such court have ordinarily jurisdiction over such person in criminal matters or not), in like manner as if the offence had been committed in regard to any proceeding of the court to which it is so referred. Act XI. 1841, sect. 7.

Magistrates re-
quired to give ef-
fect to sentences of
military tribunals.

315. A magistrate is competent to give effect to the sentence of a general court martial, adjudging imprisonment with labor among the convicts of the civil power, on the offender being delivered into his custody, and the sentence being certified to him for the purpose of his giving it effect by the judge advocate general, or his deputy, under the authority of the commander-in-chief; and the sentence so certified is the magistrate's warrant and authority for carrying it into effect according to the terms of it. Reg. IV. 1820, sect. 2.

316. Whenever, under Act XXIII. 1839, (a) any sentence of a court martial adjudges imprisonment, or imprisonment with labor, for any offence, it is the duty of every judge, magistrate, sheriff, or other officer in charge of any jail, to give effect to such sentence on the offender being delivered into his custody, and on being furnished with a copy of the sentence by the officer commanding the division, garrison, regiment, or detachment, to which the offender belongs. Act II. 1840.

317. Whenever a court martial adjudges imprisonment with labor, or with solitary confinement, or both, or whenever the sentence of such court is commuted to any such imprisonment, it is the duty of every judge, magistrate, sheriff, or other officer in charge of a jail, to give effect to such sentence, on the offender being delivered into his custody, and on being furnished with a copy of the sentence by the officer commanding the division, field-force, district, or brigade, within which the trial is held. Act XX. 1845, article 81.

But not to act
without warrant of
commitment in
prescribed form.

318. Officers in charge of jails are not to receive into custody any man, who may be sentenced to imprisonment by court martial, unless accompanied by the proper warrant of commitment, as prescribed by general orders, March 3, 1853, and a descriptive roll of the prisoner.(b) C. O. Govt. Bengal, No. 16, Dec. 6, 1854.

(a) This Act empowers courts martial in certain cases to sentence soldiers of the native army of the Company to imprisonment with or without hard labor for two years, if a general court martial, or one year if a garrison or line court martial, or six months if a regimental or detachmental court martial.

(b) With reference to the 2nd paragraph of the 84th Article of War for the native troops, the commander-in-chief is pleased to direct, that when a soldier of the native army shall be delivered over to the civil power to undergo imprisonment with hard labor, there shall be sent with him, in addition to a descriptive roll containing a statement of any

319. A person who has been tried for any offence by a court martial, under the authority of the articles of war, cannot be tried for the same in any other court whatever. Act XX. 1845, article 151.

A person tried by court martial not liable to civil courts.

320. The commander-in-chief of the military forces in the service of the East India Company in each presidency shall have power to pardon any person belonging to the said forces, convicted by sentence of a court martial of any offence against the articles of war framed for the government of the native officers and soldiers in the military service of the East India Company, which, wherever committed, is not punishable otherwise than by sentence of a court martial; or, instead of granting a full pardon to any such person, may remit any part of the punishment awarded for such offence. Act VI. 1850, sect. 1.

chief may pardon military convicts, or remit part of sentence, in certain cases.

321. In such cases, the commander-in-chief shall issue a warrant under his hand setting forth the offence, and a copy of the warrant, or other instrument, by which the offender is kept in custody in execution of the sentence, and pardoning or remitting such part of the punishment awarded for the offence as to him shall seem fit. Act VI. 1850, sect. 2.

Warrant to be issued,

322. The said warrant shall be countersigned by the magistrate of the zillah, or city, in which the offender is undergoing his sentence; or, if he is confined in any prison belonging to one of the supreme courts of judicature established by royal charter, shall be countersigned by a judge of such court, if it shall appear to such magistrate or judge that the offence, wherever committed, is not punishable by any authority other than that of a court martial; but not otherwise. Act VI. 1850, sect. 3.

and countersigned by magistrate or judge, if offence be punishable only by court martial.

indelible mark upon his person and any other matter tending to his proper identification, a warrant of commitment made out in the following form:—

To the Magistrate, or other Officer in charge of the Jail at ————
Whereas at a ———— Court Martial held at ———— on the ———— day of ————
185 ———— Sepoy* of the ———— Regiment of Native† Infantry was convicted of ————‡; and
whereas the said ———— Court Martial on the ———— day of ———— 185 ————, passed the following sentence upon the
said ————, that is to say, ———— (sentence to be entered in full but without signature):

And whereas the said sentence has been duly confirmed§ by ———— commanding ————, and the said ———— is
herewith transmitted to you to undergo the same:

Now these are to require and authorize you to receive the said ———— into your custody, and to inflict upon
him the said sentence of imprisonment with hard labor for ————, reckoned from ———— the day on which the said
sentence was passed.

Given under my hand at ———— this ———— day of ———— 185 ————.

To be signed by the confirming officer of a regimental, detachment, or line court martial, or by the assistant adjutant
general of the division, or the brigade major of the station, or the commanding officer of the regiment, if the trial has been by
general or district court martial.

* Or trooper, or private, or as the case may be.

† Or light cavalry, or artillery, or as the case may be.

‡ The offence to be briefly stated here as desertion, theft, receiving stolen goods, fraud, disobedience of lawful command, or as the case may be.

§ If there is any mitigation of the sentence, such mitigation must be noticed thus, "to the extent of ————."

General Orders of the Commander-in-Chief, March 3, 1853.

SUBJECTS RELATING TO THE CONDUCT OF CASES.

Officer in charge
of jail to give ef-
fect to warrant.

323. All sheriffs, jailors, and other persons, having custody of any offender under sentence of a court martial, shall obey and give effect to any warrant of the commander-in-chief, countersigned by a magistrate, or judge of the supreme court, as aforesaid, for the pardon and release of any offender in their custody respectively, or for the remission of any part of his sentence. Act VI. 1850, sect. 4.

Trial of European British sub- jects attach- ed to the army.

Such persons,
when apprehended
by magistrate on
criminal charges,
to be delivered to
commanding offi-
cer.

324. If an European British subject, apprehended by or brought before a magistrate on a charge of murder, rape, robbery, theft, or other criminal offence, is found to have been, at the time when the offence was committed, a commissioned, or non-commissioned officer, or soldier, serving with any body of troops in the service of Her Majesty, or of the Company, at any place not within the territories subject to the presidency of Fort William, or at any place within such territories which is situated above 120 miles from the aforesaid presidency, —or to have been, when the offence was committed, a person attached to such body of troops in any of the capacities specified in sections 45 and 60 of statute 4, George IV. cap. 81 (a),—it is the duty of the magistrate, instead of proceeding to hear evidence to the charge, to deliver over such person so charged, together with a statement of the charge, to the commanding officer of the regiment, corps, or detachment, to which such person belongs, or to the commanding officer of the nearest military station, for the purpose of his being brought to trial before a court martial under the provisions of the said act of parliament. Reg. XX. 1825, sect. 2, cl. 1.

Magistrate to as-
sist in apprehend-
such per-
sons
by court mar-
tial.

325. It is the duty of the magistrate, on a written application being made to him for that purpose by the commanding officer of any regiment, corps, or detachment, stationed or employed as specified in the preceding clause, to use his utmost endeavour for the apprehension of any British officer, non-commissioned officer, soldier, or other person of the description therein alluded to, who is charged with the crime of murder, rape, robbery, theft, or other criminal offence; and also to give his assistance, and that of the officers under his control, in securing the person so accused. Reg. XX. 1825, sect. 2, cl. 2.

for the
of wit-
nesses
to be en-
forced by the ma-
gistrate.

326. The judge advocate general, or deputy judge advocate, or other person appointed to conduct the proceedings of any court martial, assembled for the trial of offences under the said act of parliament, is competent to transmit to the magistrate, within whose jurisdiction persons whose attendance is required may reside, any warrant, summons, or other process for the attendance of such person;—and it is the duty of the magistrate to give his assistance, and that of the officers under him, in the execution of such process, and generally to aid and assist in the execution of all processes issued by such courts martial. Reg. XX. 1825, sect. 2, cl. 3.

(a) The following are the persons enumerated in the two sections quoted : all officers and persons serving and hired to be employed in the artillery, and in the several trains of artillery, and in the department of the engineers, and in the corps of engineers, and as military surveyors or draftsmen, or in the corps of sappers and miners, or pioneers, and all persons under the ordnance, and all apothecaries, veterinary surgeons, medical storekeepers, hospital stewards, and others serving on the medical establishment of the army, licensed sutlers and followers :—all officers and persons commissioned or employed in the commissariat department, or as storekeepers, and all civil officers under the ordnance, and all placed under the command of any general or other officer.

327. Magistrates are prohibited from receiving, and inquiring into any criminal charge of the nature described in sect. 2 of statute 4 George IV., cap. 81(a), which is preferred to them against any British commissioned or non-commissioned officer, soldier, or other person attached to the army, who has been regularly brought to trial under the provisions of the said Act, and acquitted or convicted by the sentence of a court martial of such offence: provided however that when it is ascertained by the magistrate, on due inquiry, that any person accused of such offence, and subject to court martial, has not been brought to trial for such offence before a court martial, and that no effectual proceedings have been taken, or have been ordered to be taken, against him, then it is the duty of the magistrate to report the circumstance for the information and orders of the governor-general in council; who may direct the case to be proceeded upon in the ordinary course of law; and the magistrate, if so authorized, is competent to proceed against the offender under the provisions of the regulations. Reg. XX. 1825, sect. 2, cl. 4.

Magistrate not

rities neglect to bring them to trial, —in which case he is to report to government.

328. But magistrates are not restricted by the above rules, either in their ordinary capacity of magistrates, or as justices of the peace, from proceeding against all British subjects, charged with criminal offences, who are not attached to the army, or subject to be tried for such offences by a court martial. Reg. XX. 1825, sect. 2, cl. 5.

These rules do not apply to British subjects not attached to the army;

329. The above rules, as far as they relate to criminal offences committed by persons attached to the army, being British subjects, are not to be held to apply or to be in force, when such offences are committed by such persons attached to any body of troops stationed in the garrison of Fort William, or at Barrackpore, Midnapore, Dum-Dum, or at any other place within the territories under the presidency of Fort William, not situated at a greater distance than 120 miles from the said presidency. In all such places, the powers and authorities vested by law in the magistrates and justices of the peace are in full force and effect. Reg. XX. 1825, sect. 2, cl. 6.

nor to British subjects attached to the army, if the offence is committed within 120 miles of the presidency.

(a) The criminal acts described in the section quoted are,—wilful murder, theft, robbery, rape, or any other crime which is capital by the laws of England, or using violence, or committing any offence against the person or property of any subject of his Majesty, or any other person entitled to his Majesty's protection, or to the protection of the respective governments of the East India Company, or any state in alliance with the said Company, within the territories of any foreign state, or in any country under the protection of his Majesty or the said Company, or at any place in the territories under the government of the said Company situated above 120 miles from the said presidencies respectively.

(b) A limit to the jurisdiction of courts martial is distinctly marked in the rules quoted above, and it would seem easy to assign to each case its specific class; but in fact many cases arise, in which it is as difficult to distinguish the legal as the most expedient jurisdiction. It is doubtless impossible to provide against all contingencies; offences which cannot be strictly called military, may yet partake so much of their nature, that no punishment could be adjudged on adequate grounds under the civil code. *Capt. Simmons*, in his work on the practice of courts martial, says: "The general jurisdiction of courts martial extends to the trial of the persons, and for the offences, declared under the power of the mutiny act, whether they be committed at home or abroad; and also, in default of a competent court of civil judicature, to the trial of military persons for all offences against the municipal law of the land; for which civil offences they would not otherwise be amenable to courts martial, except indeed officers, in a limited degree, so far as the honor or discipline of the army be affected." The general principle of the subordination of the military to the civil power is thus stated by *Mr DeLolme*: "All courts of a military kind are under a constant subordination to the ordinary courts of law. Officers who have abused their private power, though only in regard to their own soldiers, may be called to account before a court of common law, and compelled to make proper satisfaction. Even any flagrant abuse of authority committed by members of courts martial, when sitting to judge their own

Opinion of adequate general reading amenability British officers and soldiers to magistrates petty cases of assault, &c.

* See chapter of European British subjects in book 8.

330. As regards the amenability of British officers and soldiers to magistrates, under the 53rd George III, chapter 155,* with reference to the provisions of the 4th George IV,—chapter 81, and Reg. XX. 1825, the following opinion was given by the advocate general. “The statute 4th George IV, chapter 81, although it repealed the next or 106th section of the statute 53 George III, chapter 155, leaves the 105th section unrepealed; and Reg. XX. 1825, which was enacted by a subordinate legislature, and in my opinion solely with a view of carrying out the provisions of statute 4th George IV, chapter 81, cannot in any way affect the operation of the statute 53 George III, chapter 155. The statute 4 George IV, chapter 81, has been amended and re-enacted by successive enactments, 3 and 4 Vict. chapter 37, and 12 and 13 Vict. chapter 43. Under the latter Acts the same powers as were formerly conferred upon courts martial, distant more than 120 miles from the presidency, have been continued; but they both contain an express provision that nothing in those Acts contained shall be construed to exempt any officer or soldier from being proceeded against by the ordinary course of law, a provision which leaves the jurisdiction of the magistrates under statute 53 George III, chapter 155, and Act V. 1848, and of the supreme courts, wholly untouched. With respect to offences committed by British officers and soldiers, and not falling within the terms of statute 53 George III, or Act V. 1848, I am of opinion that they are only cognizable by the supreme court or courts martial, both of which courts appear to me to have concurrent jurisdiction over British officers resident beyond 120 miles from the presidency.” C. O. No. 91 of vol. 4.

SECTION III. OF COMPLAINTS.

Magistrate.
Receipt of petitions.

331. The magistrate should himself hear and decide on every petition, and should pass an order on it in the presence of the petitioner: he should not make over petitions, when first presented, to law-officers and sudder ameens for report.(a) Const. No. 627.

people, and determine upon cases entirely of a military kind, makes them liable to the animadversion of the civil judge. To the above facts concerning the pre-eminence of the civil over the military power at large, it is needless to add, that all offences committed by persons of the military profession, in regard to individuals belonging to the other classes of the people, are to be determined upon by the civil judge. Any use they may make of their force, unless expressly authorized and directed by the civil magistrate, let the occasion be what it may, makes them liable to be convicted of murder for any life that may have been lost. To allege the duties or customs of their profession in extenuation of any offence, is a plea which the judge will not so much as understand. Whenever claimed by the civil power, they must be delivered up immediately.”

(a) Petitions ought to be received every day at a fixed hour. The practice of taking petitions only on stated days of the week is very reprehensible. It is said in the case of Suroop Chunder Surmah, (Reports *L. P.* 1852, part 2, page 812) that it is objectionable for a magistrate to receive petitions in a box, or in any other way to afford “opportunities for fraud and for making malicious aspersions, which could not with safety be attempted if petitions were never taken except openly from the presenters, and they were heard instanter.” But this opinion seems questionable. Such a rule would be properly followed in a judge’s office; but a magistrate is also a police officer, and he may frequently be deprived thereby of valuable information, which a timid native ventures to put forward only anonymously. At the same time it behoves him to act on a petition with great caution, deliberation, and self-command.

332. All complaints, or charges with the orders thereon, are to be recorded in the office of the magistrates. *Beng. Reg. IX. 1793, sect. 23. Ced. Prov. Reg. VI. 1803, sect. 22.*

333. Magistrates are prohibited from requiring complainants to swear to the truth of what is alleged in their petitions. When any petition preferring a criminal charge is thought by the magistrate to call for judicial investigation, the only regular and proper course is to take the complainant's deposition on oath or solemn declaration. C. O. No. 27 of vol. 4, *W. P.*

Petitioners not to be deposed to by complainant, magistrate to issue warrant.

334. Upon a complaint being preferred in writing to a magistrate, against any person subject to his jurisdiction, for treason(a); murder; robbery; house-breaking; theft; setting fire to a village, house, or other building; counterfeiting the coin; or any other crime declared not to be bailable; or though not so expressly declared involving such dangerous breach of the peace, or degree of criminality, as from the facts deposed to before the magistrate may appear to require the immediate apprehension of the accused, and to render the admission of bail unsafe and improper;—the magistrate on the truth of the charge being deposed to by the complainant (or as is required below in paras. 336 and 337), is to issue a warrant for the apprehension of the accused in prescribed form,* and directed to the nazir of the criminal court. *Reg. IX. 1807, sect. 3, cl. 1 and 2.*

HEINOUS OFFENCES.

On the truth of complaint deposed to by complainant, magistrate to issue warrant.

* *v. Appendix A. No. 6, and Book 1, Chap. 4, Sect. 3.*

335. If the magistrate, in any bailable case of the nature above described, judge it proper to authorize the officer, to whom the warrant is committed, to receive bail for appearance (with or without security for keeping the peace), it shall be so specified in the warrant, with the extent of the bail (and security) required, in prescribed form.* *Reg. IX. 1807, sect. 3, cl. 3.*

If the case is bailable what warrant.

* *v. bail and bonds are also given in Nos. 3 and 20.*

336. The attendance and deposition of the complainant is not indispensable in preferring a criminal charge, when sufficient reason can be assigned for his non-attendance. If the complainant be unable to attend in person, or if he were not himself present at the commission of the act complained of, his written plaint presented by an authorized agent,† and corroborated by the deposition on oath or solemn declaration of one or more persons present, or otherwise personally informed of the truth of the complaint, shall be sufficient grounds for receiving the same, and for issuing process against the party accused, unless the magistrate see reason for making the previous inquiry authorized as below. *Reg. IX. 1807, sect. 4.*

The complainant himself need not appear in certain cases;

† *v. Section infra, "Of Mokhtars."*

337. But, in ordinary cases, individuals having charges of a criminal nature to prefer, are to attend in person to institute and conduct the prosecution before the magistrate, and likewise before the sessions court; and agents are not to be permitted to interfere in the conduct of such prosecutions, unless substantial reasons be shown (to be recorded on the proceedings of the magistrate) why the prosecutor himself should not attend to carry it on in person. The nizamat adawlut and session judge are to restrain any ill-judged exercise

but must in ordinary cases, without reason shown

(a) When any person is charged with treason, rebellion, or other crime against the State, the magistrate is to give immediate notice thereof to government; and is to pay immediate and strict attention to all orders, which are transmitted to him by government for the apprehension of persons charged as aforesaid, or for making any enquiry respecting such persons, or for committing them to take their trials before the ordinary courts, or before the special courts described in this Act. *Act V. 1841, sect. 6. See sect. 1, chap. 2, Book 5, "of State Offences."*

of the discretion vested in the magistrate with respect to this point. Reg. III. 1812, sect. 3.

Warrant not to
issued unless the
truth of complaint
deposed to on
oath, or on cre-
dible information;

338. But no warrant for apprehension is to be issued at the instance of a complainant, unless the truth of the charge is deposed to on oath (or solemn declaration) either by the complainant himself or by some other credible person. This however is not to restrict a magistrate from issuing process to apprehend a person suspected of having committed a heinous crime, or for whose apprehension sufficient cause may appear upon the report of a police officer, or upon any other credible information. Reg. IX. 1807, sect. 4.

339. The provisions of sect. 4. Reg. IX. 1807, expressly authorize the issue of a warrant to apprehend persons charged with serious offences upon credible information without a written complaint or deposition on oath. N. A. R. vol. 1, page 277.—For form of warrant to be used in such cases, see Appendix A, No. 47. C. O. No. 24 of vol. 4.

or until after exa-
mination of pro-
secutor as to speci-
fic facts.

340. And the magistrate is not to issue any process without previously examining the prosecutor as to the specific facts of the case, and satisfying himself that adequate grounds exist for proceeding against the accused. Reg. III. 1812, sect. 2, cl. 6.

Session judge
cannot prohibit the
issue of warrant;

341. A session judge cannot order a magistrate not to issue process to apprehend a released convict, or other particular individual. Const. No. 1100.

nor direct appro-
pension of parties.

342. The sudder court refused to accede to the recommendation of the session judge that the magistrate should be directed to put certain persons on trial, on the ground that such a matter must be left entirely to the discretion of the magistrate. Reports *L. P.* 1856, part 1, page 62.

If the magistrate
distrust the truth
of the complaint,
he may make pre-
liminary inquiry.

343. If the magistrate see cause to distrust the truth of the complaint, whether from the nature of the charge, as manifestly improbable, exaggerated, or vexatious; or from the circumstances deposed to before him, considered with the known situation and character of the person accused; and if the immediate arrest of the party complained against appear unnecessary and objectionable,—the magistrate is authorized to postpone issuing his warrant for apprehension, and to cause a previous inquiry to be made, either by means of the local police officers, or in such other mode as he shall judge most proper for the purpose of ascertaining the truth or falsehood of the complainant's allegations. If the result of the inquiry induce the magistrate to believe the charge well founded, and the offence be of the nature described in section 3†, he is to issue his warrant for the apprehension of the accused, as therein directed. But if the accusation appear groundless, or though well founded if the offence be of a bailable nature, he is, in the former case, to dismiss the complaint, or, in the latter case, to direct bail to be taken from the accused for appearance in person, or by vakeel, to answer the charge. Reg. IX. 1807, sect. 5.

† See above
para. 334.

BAILABLE
OFFENCES.

Prosecutions for

parties.

344. A prosecution for a misdemeanor cannot be originated except on the application of the aggrieved party; N. A. R. vol. 3, page 171; Reports *W. P.* 1851, pages 36 and 624; and without a formal complaint a charge cannot be taken up. Reports *W. P.* 1855, part 2, page 729. So, a magistrate cannot institute proceedings against, and punish a person, in the absence of any application to that effect from the complainant. Reports *W. P.* 1851, page 90. As regards prosecutions initiated by civil courts, see section "of commitment." See also para: 349.

345. Where it appeared that the prosecutor was not the aggrieved party, having col-
luded with the defendants for his own benefit, it was held that the prosecution was null, and
that the defendants could not be convicted. Reports *W. P.* 1854, part 1, page 745.

No
can be had on the
prosecution of a
third party.

346. Upon a complaint in writing being preferred to a magistrate against a person
subject to his jurisdiction for any bailable crime or misdemeanour, which does not appear to
require the immediate apprehension of the accused, the magistrate, upon the party complain-
ing making oath (or solemn declaration) to the truth of the complaint,—or without such
oath (or declaration), if satisfactory reason be assigned by the complainant for not attending to
make the same, and the truth of the charge be deposed to by some other credible person,—
is to issue a summons,* specifying the offence charged, and, according to the circumstances
of the case, requiring the accused to appear in person or by vakeel to answer the charge on
or before a certain day. Bail for his appearance may be required if deemed necessary.†
Reg. IX. 1807, sect. 6.

If the truth of
the charge is de-
posed to,
trate is 1
summons.

* v. Book 1,
chap. 4, sect. 2;
and Appendix A,
No. 1.
† v. Appendix
A, No. 3.

347. If the accused person, on whom a summons has been so served, does not attend
in person or by vakeel, and give bail (if required) according to the exigence of the summons
within the period limited by it, the magistrate is to issue a warrant under his official seal and
signature for the apprehension of the accused; and if he abscond, is to proceed against
him in the manner directed by sect. 4, Reg. XI. 1796 for *Beng.* and *Ben.*; and sect. 4,
Reg. III. 1804 for *Ced. Prov.*; [as modified by sect. 26, Reg. XX. 1817.‡] Reg. IX.
1807, sect. 7.

Warrant to be
issued in cases of
persons neglecting
summons.

‡ v. *Erosion of
process*; Book 1,
chap. 4, sect. 10.

348. When a defendant has been allowed to answer a charge and to defend himself by
attorney, he is bound to appear in person before the magistrate to receive sentence; and it
should not be passed in the absence of the defendant. Reports *L. P.* 1854, part 1, page 433.

Defendant to ap-
pear to receive sen-
tence though he
has answered by
attorney.

349. So much of the foregoing provisions, and so much of any other enactment, as re-
quire a complaint in writing to be preferred to a magistrate, or the attendance of a complain-
ant, is not to apply to any offence which affects the public. Act II. 1856, sect. 1.

OFFENCES
AFFECTING THE
PUBLIC.

Written com-
plaint not required.

350. A magistrate, or other officer having jurisdiction over such offence, may, on the
information of a police officer or other person, given on oath or affirmation, or on his own
personal knowledge (having first recorded the grounds thereof in his own handwriting), pro-
ceed against any person for such offence, in the same manner as if a complaint in writing had
been preferred, and duly deposed to. Act II. 1856, sect. 2.

Magistrate may
proceed on infor-
mation sworn, or
his own knowledge.

351. All proceedings under this Act are subject to the like appeal as other proceedings
of such magistrates and officers. Act II. 1856, sect. 3.

Appeals.

352. All complaints or prosecutions for adultery, fornication,* calumny, abusive lan-
guage, slight trespass, or inconsiderable assault, whether preferred in person or by vakeel,
are to be preferred in the first instance at the cutcherry of the magistrate, within the limits
of the jurisdiction of whose court the offence has been committed. This does not apply to
cases of maihem, actual affray, or tumultuary assemblies. Reg. VII. 1811. sect. 3.

PETTY OFFENCES.

To be
in the fi

353. Magistrates are strictly prohibited from referring any such trivial cases to their
police officers for investigation and report. All investigations for the purpose of ascertaining

And not to be
referred to the po-
lice.

the truth or falsehood of such charges are invariably to be conducted by the magistrate in person or his assistant, aided so far as is authorized by the existing regulations by the native officers attached to his sudder cutcherry. Reg. VII. 1811, sect. 6.

Police not to take cognizance.

354. Police officers are not to take cognizance of such cases; but are to refer persons preferring such to the magistrate's court, recording the particulars in the thana diary. Reg. XX. 1817, sect. 12, cl. 1 and 2.

Example.

355. Rape is among the offences which the magistrate is prohibited from referring to the police by Reg. VII. 1811; but it is not mentioned in sect. 12, Reg. XX. 1817, among the charges not cognizable by them. Such case may now therefore be legally referred to them for investigation, or may be preferred directly at the thana. Const. Nos. 1174 and 1365.

Charge can be laid without petition by deposition on oath.

356. In such cases, if the complaint is brought before the magistrate by the proper complainant in the course of a judicial investigation in a separate case, charge by petition is not necessary. (This was held in a case of the murder of a wife by her husband in which the prisoner accused the deceased of committing adultery, and the magistrate took up the charge of adultery against the paramour on the deposition on oath of the prisoner.) Const. No. 1199.

Magistrate is to satisfy himself of the grounds of the charge by examining the prosecutor, issuing process, and, if he is not satisfied, to summon the witnesses.

357. In such, as well as in more heinous cases, the magistrates are strictly prohibited from issuing any process without previously examining the prosecutor as to the specific facts of the case, and satisfying themselves that adequate grounds exist for proceeding against the accused party. If the magistrate see grounds to distrust the truth of the charge, previously to issuing process against the accused, he is to summon the witnesses named by the prosecutor, or as many of them as he may judge proper, and examine them as to their knowledge of the facts and circumstances; but inquiries of this nature are on no account to be committed to the police. (a) On such occasions, the rules* contained in the preceding clauses of this section regarding the payment of the subsistence of witnesses are to be duly enforced. Reg. III. 1812, sect. 2, cl. 6.

* r. section 6, "Of witnesses."

Notice of complaint may be served on the accused.

358. When a magistrate instituted a custom of giving the defendants an opportunity of appearing to answer the charge by notice served on them at the time of the institution of the suit, thereby obviating the unnecessary summoning of a large number of defendants, and their consequent ultimate acquittal; the sudder court approved of the practice, observing that such notice to the accused is not compulsory, nor does it in any way supersede the processes prescribed by law for procuring the attendance of accused persons if they do not attend voluntarily. It may be of obvious advantage to give to a defendant, or to one of several

(a) The practice, on a complaint being preferred, of first summoning the witnesses cited in support of them, and after examination discharging the same, before issuing orders regarding the appearance of the same, is not illegal, being authorized by sects. 5 and 6, Reg. IX. 1807. A magistrate may, however, always resummon a witness on the expression of a wish to that effect by the accused, who is entitled under the law (cl. 2, sect. 18, Reg. VII. 1803) as interpreted by Const. Nos. 658 and 1280, to be confronted with the witnesses who depose against him, and cross-examine them; though this privilege is seldom desired to be exercised, at least in the bulk of petty and insignificant cases coming under the cognizance of the local criminal courts. C. O. W. P. No. 1559, Decr. 18, 1854.

defendants, the option of being present on the first taking of evidence upon a charge.^(a)
C. O. No. 107 of vol. 4. *L. P.*

359. The practice adopted by a magistrate of summoning only one defendant in the first instance, and postponing the summons of the others until he had taken the evidence for the prosecution, was condemned as not being strictly conformable to the regulations; and the authorities were required to adopt every possible means to prevent the indiscriminate summons or apprehension of persons charged with petty offences on groundless suspicion and without sufficient cause. ^(a) C. O. Nos. 19 and 33 of vol. 2.

Indiscriminate
summons to be
avoided.

360. In order to accomplish this, a magistrate required his assistants to embody in a proceeding the proof adduced against the accused previous to issuing a summons for their attendance; and he directed the uncovenanted officers to abstain from summoning the accused until they had submitted such proceeding and the original depositions to himself. C. O. No. 63 of vol. 2.

Measures taken
to avoid such by
subordinates.

361. In cases of a trivial nature, such as abusive language, slight trespasses, and inconsiderable assaults or affrays, in which there may be no reason to apprehend that the accused will abscond, bail for appearance is not to be required in the first instance; but may, at any time during the investigation of the charge, be called for by the magistrate, if circumstances render it necessary. Reg IX. 1807, sect. 8.

Bail not to be
required in the first

362. On a complaint being preferred in writing to a darogah, or other officer of police authorized to receive the same, against a person subject to his jurisdiction, for any bailable* crime or misdemeanor cognizable by the police, and which does not require the immediate apprehension of the accused, the police officer receiving such complaint, upon the complainant making oath or declaration to the truth of the complaint,—or without such oath or declaration, if satisfactory reason be assigned by the complainant for not attending to make the same, and the truth of the charge be deposed to on oath or solemn declaration by some other credible person,—is to issue a summons †. Reg. XX. 1817, sect. 24, cl. 1.

Police officers.

BAILABLE
OFFENCES.

On
the

* v. ¶ 366.

† v. Appendix
No. 32.

363. If the charge is of a serious nature, the police officer may require bail, to be specified in the summons;‡ but it is in no case to exceed what may be sufficient to prevent the parties absconding before the case comes before the magistrate, who is then to issue such further process or order as he may judge proper. Reg. XX. 1817, sect. 24, cl. 3.

In serious cases
bail may be required.

‡ v. Appendix A,
No. 33.

364. If an accused person, on whom a summons has been served, does not attend in person or by vakeel, and give bail (if required) according to the exigency of the summons, within the period limited by it, the police officer is to issue a warrant* for his apprehension. Reg. XX. 1817, sect. 24, cl. 4.

If summons is
neglected, warrant
to be issued.

* v. Appendix A,

365. Upon a complaint being preferred in writing to a darogah, or other police officer authorized to receive the same, or on the receipt of credible information, whether given by confessing prisoners against accomplices, or by other person against any person subject to

OFFENCES.

On the truth of
the complaint be-
ing deposed to, to
issue warrant;

(a) There is one objection to this notice, viz. that the service of it cannot be enforced by law.

* For theft and burglary, see special rules in book 2, chap. 3, sect. 6.

his jurisdiction, for any crime of a heinous nature,—such as murder, robbery, house-breaking,* theft,* maiming, wounding, arson, counterfeiting the current coin, or knowingly uttering base coin, or any crime involving a dangerous breach of the peace, such as a violent affray, or assembling persons to commit an affray, or any similar offence requiring the immediate apprehension of the offender,—and on the complainant, or other credible person acquainted with the case, deposing on oath (or solemn declaration) to the truth of the complaint,—the darogah is to examine the party deposing regarding the circumstances of the case; and on his being satisfied from the particulars communicated that there are grounds to believe the charge well-founded, and that the immediate apprehension of the offender is necessary to the ends of justice, he is to cause the accused to be apprehended by a warrant,† and sent in safe custody to the magistrate within 48 hours after his apprehension; unless any special reason appear, why the issue of such process should be stayed until the charge is reported for the orders of the magistrate, in which case such report is to be made without delay. Reg. XX. 1817, sect. 25, cl. 8.

† v. Appendix A, No. 34.

unless in special case.

In what cases may not, and may

‡ v. Appendix A, No. 35.

Persons wounding or slaying in self-defence, not to be proceeded against.

Security to keep the peace may be required in addition to bail.

z A,

Subsequent proceedings.

Particulars of the act complained of to be recorded.

Course of inquiry.

|| Presence of a complainant unnecessary.

which affect the public. Act. II. 1856, sects. 1 and 2; para. 849.

366. Persons charged with murder, robbery, house-breaking, theft, arson, counterfeiting the coin, maiming or serious wounding where the life of the person wounded is in danger, are not to be admitted to bail, if there are reasonable grounds for believing such persons guilty;—but in all other cases, if sufficient bail is tendered for appearance before the magistrate, the police officer is to accept such bail,‡ and immediately to release the person apprehended. Reg. XX. 1817, sect 25, cl. 8.

367. Persons who wound or slay murderers, robbers, or thieves, in their own defence or in defence of their property, are not to be proceeded against or placed in restraint, or required to give bail, except under special orders of the magistrate. Police officers violating this rule are to be dismissed. Reg. XX. 1817, sect. 25, cl. 10.

368. In cases of manifest necessity, when the police officer is apprehensive of danger to the public tranquility by the enlargement of a person, arrested on a charge of a bailable offence, without security for his peaceable conduct, he may require from him security to keep the peace, in addition to bail, the surety (or sureties) executing a recognizance§ in an amount to be regulated by the circumstances of the case, and the condition of the person executing the same. Reg XX. 1817, sect. 25, cl. 11.

369. The magistrates upon receiving any charge, are to be careful to ascertain from the complainant, and to record upon their proceedings, on what day of the month, in what year, and at what time of the day or night, the act complained of was committed. Beng. Reg. IX. 1793, sect. 6. Ced. Prov. Reg. VI. 1803, sect. 6.

370. Upon the prisoner being brought before the magistrate, he is to enquire into the circumstances of the charge, and to examine the prisoner, and the complainant,|| and also such other persons as are stated to have any knowledge of the crime or misdemeanor alleged against the prisoner, and to commit their respective depositions to writing. The complainant and the witnesses are to be examined on oath, but the prisoner shall not be required to swear to the truth of his deposition. Beng. Reg. IX. 1793, sect. 5. Ced. Prov. Reg. VI. 1803, sect. 5.

371. Magistrates are also, in all cases, to make full inquiry into every circumstance likely to lead to the ascertainment of the truth, and are competent to exercise their discretion in taking evidence on behalf of the person accused, with a view to afford him an opportunity of establishing his innocence, before proceeding to commit him to take his trial at the sessions. Reg. VIII. 1830, sect. 2, cl. 1. *See also* C. O. No. 54 of vol. 2, paras. 13 and 14.

372. When the prisoner is put on his defence, his guilt is not to be assumed; the charge should be clearly stated to him, and he should be asked in simple terms what he has to say for himself. N. A. R. vol. 6, page 264.

Charge to be clearly stated to defendant.

373. It was held irregular to proceed to a decision in a case of trespass, when another case under Act IV. 1840, regarding the same subject matter, was at the time pending. In such cases, the court observed, if there be any matter for investigation, as regarding the plunder or obstruction, not the produce of land, necessarily connected with the disputed possession of land, such matter must be brought forward in a distinct complaint, and is most properly to be disposed of after the questions falling under Act IV. 1840 have been decided. Reports *L. P.* 1852, part 1, page 896.

Where the acts complained of involve offences of a distinct distinct should be made.

374. After this inquiry, if it appear to the magistrate that the crime or misdemeanor charged against the prisoner was never committed, or that there is no ground to suspect him to have been concerned in the committing of it, the magistrate is to cause him to be forthwith discharged, recording his reasons for releasing him. On the contrary, if it appear to the magistrate that the crime or misdemeanor was actually committed, and that there are grounds for suspecting the prisoner to have been concerned in the perpetration of it, the magistrate is to cause him to be committed to prison, or held to bail (according as the offence is bailable or not), to take his trial at the sessions; and is to bind over the complainant to appear and carry on the prosecution, and the witnesses to attend and give their evidence. *Beng. Reg.* IX. 1793, sect. 5. *Ced. Prov. Reg.* VI. 1803, sect. 5. (a)

Prisoner to be released, or committed according to the evidence.

375. Magistrates are competent, of their own authority, notwithstanding the existence of grounds of suspicion, to release any person charged before them with any crime or misdemeanor, whenever, from the whole of the evidence adduced in support of the charge, and that adduced in behalf of the party charged, there does not appear a reasonable probability of conviction under a committal for trial before the sessions. Reg. VIII. 1830, sect. 2, cl. 2.

But not to be committed if no probability of conviction.

376. Such order of release is not such an acquittal as would bar the re-institution of the case in the event of further evidence being found, if it be made conditional on the discovery of further proof, or if the offence charged be beyond the competency of the magistrate. Reports *W. P.* 1856, part 1, page 20.

Such order not an acquittal.

377. It is competent to a magistrate to limit his conviction to what he may consider to be established against a prisoner upon evidence in respect to particular facts, although the charge, referring to the same facts, which was at first preferred against the prisoner, and to which he was called on to answer, may have been of a much graver nature. The charge, as in the first instance laid before, or stated by, a magistrate, may be inaccurate or mistaken.

Conviction to be confined to what is proved in evidence.

(a) For the rules to be observed in making commitments to the sessions, see subsequent section "Of commitments."

In his decision it is his duty to confine his judgment and sentence to the offence that he finds to be proved. Reports *L. P.* 1853, part 1, page 579.

Further instructions as to injudicious commitments.

378. It is obviously the duty of each committing officer gravely to consider the actual weight and character of the evidence against each prisoner, before he proceeds to make his commitment. A prisoner committed to the sessions is, in most cases, subjected to imprisonment, or to detention on bail until the trial can take place; and it is not a light thing to expose any person (who must always be presumed to be innocent, till proved otherwise) to such disgrace and distress as must invariably attach to such a condition. The party injured, who was, perhaps, reluctant even to complain to the magistrate, should not, unless there be grounds to anticipate a conviction, be further harassed by an order for his attendance at the sessions. The witnesses, who, for the most part, have no interest in the prosecutor's case, should not, without sufficient cause, be again called away from their homes to attend at the sessions, after they have already once appeared before the magistrate. Finally, the time of the judge and his law officer, or of a jury, should not be uselessly employed when the other claims on their services are so numerous and important. All these evils necessarily result from injudicious and indiscriminate commitments, and it is the bounden duty of every officer to put a stop to them. The court have too frequently had to notice improper commitments, where fatal contradictions between the evidence recorded by the magistrates and the original proceedings before the darogah have been entirely overlooked and left unexplained by committing officers. In many dacoities, the earlier reports from the police show distinctly that no person was recognized; notwithstanding which, the committing officer puts faith in the subsequent depositions (almost *verbatim* similar one to the other) given before himself, in which a number of persons are identified under the most improbable, sometimes hardly possible, circumstances. The result of such a commitment must be an acquittal. With regard to the class of doubtful cases, where the guilt of the prisoner turns chiefly on circumstantial evidence, every thing depends upon the experience and discretion of the committing officer; and the court are unable, therefore, to lay down any instructions for their guidance beyond the considerations already suggested above. They observe, however, that such occasions afford opportunities for exhibiting judicial aptitude, and they will always be ready to record their approbation of those officers, who evince their ability and judgment, which will be tested by the result of their commitments. C. O. No. 19, July 11, 1855, *L. P.*

Bail-bonds for prisoners released upon bail, and recognizances of prosecutors and

379. All bail-bonds for prisoners released upon bail, and the recognizances required to be taken from prosecutors and witnesses, are to be for a specific sum, the amount of which is to be determined by the magistrate, upon a due consideration of the case and the circumstances and situation in life of the parties, and are to contain a clause declaring the amount forfeited to government in the event of the condition of it not being performed. *Beng. Reg. IX. 1793, sect. 5. Ced. Prov. Reg. VI. 1803, sect. 5.*

Intermediate written proceedings unnecessary.

380. In all cases investigated by the magistrate, no intermediate proceedings of length are to be admitted. In the event of its being necessary to require further investigation by the police, or the attendance of further evidence, it will be sufficient to pass an order to that

effect in as many words, without entering into any detail of the facts of the case. C. O. No. 138 of vol. 3, *L. P.*

381. Every decision, sentence, or final order, which shall hereafter be made or passed by any officer of the East India Company acting judicially, together with the reasons for making or passing the same, shall be written in the vernacular language of such officer; and shall be dated and signed by such officer in court at the time of his making or passing the same; and the original shall be filed with the record or proceedings in the case; and a translation thereof, where the original is recorded in a different language to that in ordinary use in proceedings before such officer, shall be incorporated in the decree or record of the decision, sentence, or order. Act XXXIII. 1854, sect. 1.

All officers acting judicially to record their decisions in their own vernacular;

which are to be filed with translation on the record.

382. Nothing in this Act shall be so construed as to require officers of the East India Company acting judicially to write their decisions, sentences, injunctions, or orders, in open court. Act XXXIII. 1854, sect. 3.

Decisions need not be written in open court.

383. No appeal shall lie from any decision, sentence, injunction, or order, nor shall the same be reversed or remanded, upon the ground of non-compliance with the provisions of this Act. But the appellate court may, by precept, require the officer of the lower court to comply with the provisions of this Act; and to certify his reasons for any such decision, sentence, or order, to the appellate court; and any such appellate court may, if it deem it necessary for the ends of justice, postpone its final decision in the appeal, until such precept shall have been returned. Act XXXIII. 1854, sect. 4.

No appeal for non-compliance with this Act. But appellate court may require compliance.

384. Every criminal officer, acting judicially, is bound to record his decision, sentence, or final order, together with his reasons for making or passing the same, in the mode prescribed above. Prescribed tabular forms* are to be filled up and placed on the record of each case. Where it may happen that, on the same charge, one prisoner is convicted and another is acquitted, both forms must be employed. In cases under Act IV. 1840, and in miscellaneous cases, no form is prescribed; but each officer is to adopt such form as is required by the special nature of the case before him. In no case is it necessary to give an abstract of the depositions of witnesses. Such abstracts are useless and untrustworthy. The officer deciding the case has already heard the depositions at length, and the appellate court must also peruse the original depositions. Such parts of the evidence as are necessary to the understanding of the case will be so referred to in the grounds of the decision recorded by the officer who tries a case, that he will have only himself to blame, if his arguments founded thereon are misunderstood by the appellate authority. C. O. No. 14, Feb. 9, 1855, *L. P.* C. O. No. 789, June 16, 1855, *W. P.*

Forms prescribed for decisions.

* See App. C. Nos. 1, 2, and 3.

Abstract of evidence unnecessary; but reasons of decision to be plainly set forth.

385. Native deputy magistrates will of course use only the vernacular form; but European officers will file with the record of every case decided by them both an English form, and a counterpart in the vernacular. C. O. No. 789, June 16, 1855, *W. P.*

Natives to use only vernacular form.

386. It is the duty of session judges to see that these rules are duly carried out by the magisterial authorities, who on their part must exact an observance of them from the deputy magistrates under their control; must take care that those officers are correctly informed of

and see that their subordinates attend to these rules.

the purposes of the Act ; and must take proper notice of every occasion of its injunction being neglected. C. O. Jan. 20, 1855, *W. P.*

**Malicious,
&c.,
complaints.**

If of petty offence within the competence of the lowest court.

* i. e. the offences then within the competence of the magistrate.

387. When complaints brought before a magistrate for petty offences, such as abusive language, calumny, inconsiderable assaults, or affrays, or petty thefts,* appear to him to be litigious, vexatious, or groundless, he is authorized to punish the complainant by imprisonment not exceeding fifteen days, or fine not exceeding fifty rupees—unless the offender is an actual proprietor of land paying an annual revenue to government of more than ten thousand rupees, or a proprietor of *ayma* land paying a quit revenue to government exceeding five hundred rupees per annum, or of *lakhiraj* land the annual produce of which is above one thousand rupees, in which cases the offender is liable to a fine not exceeding two hundred rupees. *Beng. Reg. IX. 1793, sect. 10. Ced. Prov. Reg. VI. 1803, sect. 10.*

Punishment within the power of the magistrate on any complaint.

388. Whenever any charge upon investigation proves manifestly malicious, vexatious, or unfounded, the magistrate may, in extension of the above punishment, sentence the person by whom the charge has been preferred to such period of imprisonment, not exceeding six months, as on consideration of the apparent motives and tendency of the charge appears proper. *Reg. VII. 1811, sect. 5.*

Construction of the above powers.

389. The punishment under the latter provision cannot be inflicted *in addition* to that prescribed in the former ;—the maximum would be six months' imprisonment, *or* a fine of fifty rupees (except in the cases of the particular classes noted, in which the fine may be two hundred rupees.) *Const. No. 459.*

Limitation of cognizance.

Magistrate cannot punish for such complaint laid before collector.

390. The power of the magistrate in cases of this nature is restricted to the cognizance and disposal of those only that have been primarily instituted before him. He is not competent therefore to award punishment for a false complaint made before the revenue authorities, no case connected with such complaint having originated in his court. *Const. No. 1220.*

Police how to act in such cases.

391. If, upon inquiry by police officers, a complaint appears to be false and malicious, the darogah is to report the circumstances to the magistrate, and to require the complainant to furnish bail for his appearance before the magistrate; in the event of his not conforming to such requisition, he is to be forwarded under custody to the foudaree court. *Reg. XX. 1817, sect. 23, cl. 3.*

The complaint must be on oath.

392. A person preferring a false and malicious complaint before a darogah, but not sworn to the truth of it, is not liable to punishment under the above provisions. *Const. No. 1189.*

393. The giving false information to the police, not on oath or solemn affirmation, is not a punishable offence. *Reports L. P. 1852, part 2, page 968.*

False charge must be such as to cause injury and annoyance.

394. The provisions of sect. 5, *Reg. VII. 1811*, only empower the courts to award sentence of imprisonment, when a false and unfounded charge is laid against a particular person, so as to cause injury and annoyance to him ; but not where the complainant has made no charge against another, but has merely made a report to the police of the occurrence of a dacoity, which report, on enquiry, has been proved to be false. *Colebrooke's Reports, page 111.*

395. It is not strictly indispensable to take a defence from a party before sentencing him for a false and malicious charge, as the proceedings connected with the charge contain the proof of its being false and malicious, and it is upon them that his summary conviction is by law permitted. The court however think that the party accused of bringing such charge should be allowed, before being sentenced, the opportunity of making any statement by which he may desire to remove the impression of the false and malicious nature of the charge arising out of the proceedings. The absence of such statement does not, however, *vitate* the conviction and sentence. *Letter from Nizamut Adawlut to Judge of Behar, No. 428, May 21, 1851.*

It is not *necessa-
ry* to
of a

396. The power vested in the magistrate by these provisions should be exercised with the greatest discretion. Session judges can receive appeals from the magistrate's decisions, and pass such orders therein as they may think just and proper. Const. No. 610.

Magistrate to use
discretion.

397. The commissioner of circuit was informed that he was not competent, in that capacity, to fine a person under section 5, Reg. VIII. 1825 [which provided for the punishment of persons bringing false and malicious charges against an European public officer, and empowered certain specified authorities to punish for such charges, but is repealed by Act XXVI. 1839]; but that, with regard to the complaint against the nazir and peons of the magistrate's office, he possessed, as superintendent of police, the powers of magistrate in the punishment of false and malicious complaints. Const. No. 754.

Power of superin-
tendent of police.

398. A session judge is not at liberty, in a case of commitment, to punish the prosecutor for a groundless and malicious complaint, as the very fact of commitment affords sufficient presumption that the complaint was not of that character ;—though he is competent to commit him and his witnesses for perjury, in the event of his seeing reason to believe that a false accusation has been preferred on oath, and an attempt made to substantiate it by false evidence. But in the case of appealed prosecutions brought by private individuals before the session judge, he can exercise the same power as a magistrate in punishing such complaints. Const. Nos. 528 and 530.

Judge
punish in a case
committed to the
sessions ;

but may in ap-
peals.

399. A merely litigious appeal is not punishable by a magistrate ; but if a prosecutor, whose complaint has been dismissed by the subordinate court, persist in bringing before a magistrate a charge evidently malicious or greatly exaggerated, it would be competent to that functionary to punish him under sect. 5, Reg. VII. 1811. Const. No. 1208.

A merely litigi
appeal not punish-
able.

400. A false deposition on oath containing a deliberate and specific criminal charge, which the deponent knows to be unfounded, and which also appears to be malicious, is within the provisions of perjury, notwithstanding the provisions (above-quoted) for false and malicious charges. Const. No. 233.

These provisions
do not supersede an
indictment for
perjury.

SECTION IV.

OF INFORMERS.

Goindahs how to
be employed.

Their informa-
tions not to be
received without
evidence.

Not to be intrusted
with the execution
of process.

How to be paid,
how

officers not
to employ ;

and to apprehend
professing
by

401. The duty of goindahs is to discover the haunts of dacoits; to watch their movements; to mix with them occasionally with a view of acquiring accurate intelligence of their operations and designs; to communicate to their employer the result of such enquiries; and finally to point out to the police officers the persons whom the magistrate may order to be apprehended. Magistrates are to be careful in observing the strictest adherence to the provisions of Reg. IX. 1807; and are not to issue process against any one, on a criminal charge or information from a person known to be a goindah, without satisfactory evidence of the truth of the accusation. Magistrates are not to intrust the execution of any criminal process to a goindah, nor to allow any authority whatever to be exercised, directly or indirectly, by any person of this description; and the utmost vigilance is to be observed to prevent every possible abuse in cases in which a goindah is in any way concerned. Goindahs should receive a small monthly allowance for their immediate subsistence; and should be rewarded for any particular duty according to their activity and fidelity; the fixed allowances should be charged in contingent bills; but rewards will come within the provisions of section 18, Reg. XVI. 1810.(a) C. O. Nos. 93 and 78 of vol. 1.

402. The darogahs are prohibited from encouraging or employing, without the knowledge or express sanction of the magistrate, any goindahs who earn a livelihood by the profession of an informer; and they are to apprehend, and to send to the magistrate, any persons giving out that they are employed as goindahs by the magistrate or by the superintendent of police, unless they can show a written authority from such officer. This is not to be construed to preclude police officers from employing persons to trace offenders, who have eluded the pursuit of justice; or from encouraging persons to furnish information, by which robbers or other known criminals may be discovered and apprehended. On the contrary,

(a) "I will not undertake to examine the merits of the experiment, which was resorted to a few years ago for the purpose of invigorating and improving our system of police; because men of greater knowledge and experience than myself have canvassed the plan, and after a very elaborate discussion, it is still vehemently condemned by one party, and as vehemently extolled by the other. I allude to the employment of goindahs or informers, as instruments of police. With respect to these persons I shall only observe that as far as I had an opportunity of judging of their agency in the judicial situation which I formerly held, my testimony is decidedly against them. I regarded the employment of goindahs as a measure pregnant with the greatest mischief; and I was satisfied that they were scarcely a less grievous burden upon the country than the bands of robbers whom they were employed to root out. I do not mean to assert that a magistrate should not look abroad for information, or that he should not employ instruments to obtain it. I object to those roving commissions, which have been given to men of questionable and even infamous character, under which they erect petty tribunals in the interior of the country, spread alarm wherever they appear, suborn evidence by the most shameless means, conjure up offences which have no existence but in their own atrocious machinations, levy contributions from those who are rich enough to purchase off accusation, and finally drag the indigent and helpless to a jail for the purpose of manifesting a merciless and mischievous activity. These abuses are not the creation of imagination. I remember full well to have convicted a band of goindahs of the most oppressive and criminal conduct; and if proof be required of the irregular and unjustifiable proceedings of these men, the public records will, I believe, supply it. The bands of dacoits, which infest the country are no doubt, a very serious evil; but there is no description of robber so formidable as the licensed free-booter who acts under the sanction of law.
H. St.G. Tucker's Memorials of Indian Government, page 196.

the darogahs are to encourage such persons to communicate all the information possessed by them; and are to report to the magistrate any instance of meritorious service on the part of any such individuals, by which offenders are brought to justice, whether such individuals have exposed themselves to personal risk and trouble, or have merely supplied intelligence. Reg. XX. 1817, sect. 11, cl. 7.

But they are to encourage persons in giving information; and are to report for rewards.

SECTION V. OF CONDITIONAL PARDON.

403. In cases of murder, gang-robbery, highway-robbery, murder by thugs, coining, and forgery, as well as in cases of burglary and theft attended with circumstances of aggravation, magistrates are empowered, without previous reference to any other authority, to tender a pardon to one or more persons (not being principals), supposed to have been directly or indirectly concerned in or privy to the offence, on condition of their making a full, true, and fair disclosure of the whole of the circumstances within their knowledge relative to the crime committed, and the persons concerned in the perpetration thereof, or of their pointing out (in cases of robbery, burglary, and theft) the mode in which the stolen property may have been disposed of. Reg. X. 1824, sect. 3, cl. 1. (a)

Magistrate empowered to tender a pardon to accomplices in certain crimes on condition sons, &c.

404. Persons to whom pardons are tendered under the above provisions are to be examined without oath. Reg. X. 1824, sect. 3, cl. 2.

Such persons to be examined without oath,

405. Any examination by the magistrate of a prisoner to whom pardon has been tendered, must be taken without oath. It is for the sessions court alone at the trial to receive the evidence so tendered on oath; and to order the commitment of the prisoner for the original offence, if he has not fulfilled the conditions of the pardon. C. O. No. 1, January 2, 1854, *L. P.* The *Western* court hold that he must be called upon to make a full disclosure of the circumstances within his knowledge before his examination on oath as an approver. Reports *W. P.* 1854, part 2, page 381.

by the magistrate.

406. A prisoner, admitted as a witness, should be examined *de novo*. It is not sufficient that he should be asked to depose to the truth of the statement made by him as defendant. Const. No. 1137.

Evidence to be taken *de novo*,

407. The depositions of prisoners, admitted as witnesses, should be taken before the magistrate in the presence of those whom they may affect. Const. No. 405.

in the presence of those whom it may affect.

408. In any case in which a magistrate exercises the powers vested in him by this section he is to record on his proceedings, either in English or the vernacular, the considerations which have induced him to deem such a course of procedure advisable. Reg. X. 1824, sect. 3, cl. 3.

Magistrate's reasons to be recorded,

(a) Construction No. 152, dated April 7, 1811, requires evidence to the privy, or criminality, of the person proposed to be pardoned to be first taken; but this was ruled in accordance with sect. 5, Reg. XIV. 1810, which is repealed by Reg. X. 1824; and as there is no provision to this effect in the latter regulation, the construction must be held to be superseded.

- in a roobakaree, 409. Whenever a magistrate has occasion to tender a conditional pardon under this law, he is, if it be accepted, immediately to record a roobakaree, stating the fact of his having offered the pardon, and the reasons which induced him to make the offer. If the case is committed to the sessions, the judge is to be careful to annex this roobakaree to the deposition taken by him from the party who has thus become a witness through the offer of pardon. C. O. No. 113 of vol. 4, *L. P.*; and No. 957, August 2, 1854, *W. P.*
- which the judge is to annex to proceedings. 410. The magistrate should not make an offer of conditional pardon, until the prisoner's answer has been recorded, whether he denies or confesses the charge laid against him. Reports *L. P.* 1855, part 2, page 505.
- Prisoner's answer recorded before is made. 411. A magistrate may also tender a pardon to any accomplice or accessory, in a crime of the descriptions specified above, with a view to obtain his evidence in the trial of the other offenders. In such cases he should examine the individual in question in the first instance without putting him on his oath. Reg. X. 1824, sect. 3, cl. 4 and 5, as modified by sect. 7, Reg. I. 1829.
- Pardon may also be obtained with a view to obtain King's evidence. 412. A magistrate is not authorized to tender a pardon to persons concerned in any other crimes than those specified above:—so held in regard to a case of affray, and a case of torturing and false imprisonment. Const. Nos. 535 and 1026.
- Provisions confined to crimes specified. 413. But application may be made to government with the view to admit to pardon, under sect. 6, Reg. XIV. 1810, any person charged with or convicted of any criminal offence. Reports *L. P.* 1852, part 2, page 383.
- But government may admit in any case. 414. A pardon may be tendered to more than one individual of the number concerned:—and 24 hours is considered a proper interval to be granted to persons to whom pardon has been offered, before they are called upon to signify their determination to accept it or not. Const. No. 405.
- Pardon may be tendered to more than one. 415. A person concerned in an offence of the nature specified above, giving information to a magistrate through a police officer, which may lead to any of the objects for which a magistrate is authorized to offer a pardon by the above provisions, is entitled to such pardon. Const. No. 89.(a)
- Interval to be allowed for consideration. 416. Magistrates are to be cautious not to tender pardons to principal offenders; and in no case to make the offer to accomplices or accessories without a reasonable prospect of recovering the property plundered through their means,—or of thereby securing the apprehension and conviction of the principal offenders, or of the receivers of the stolen property. In cases in which there appears no prospect of obtaining other evidence than the deposition of an accomplice or accessory, a pardon is not to be granted. Reg. X. 1824, sect. 4, cl. 1 and 2, as modified by sect. 7, Reg. I. 1829.
- Persons giving information through police entitled to pardon. 417. Although pardon ought not to be tendered to principal offenders, yet their evidence is not on that account inadmissible. N. A. R. vol. 6, page 111. But in the *Western*
- Cautions to be taken in tendering. Evidence of principals admissible. *P.*

(a) This construction was ruled in reference to sect. 9, Reg. I. 1811, which has been repealed by Reg. X. 1824; but it appears equally applicable to the latter.

court it has been held, when the principal has been illegally pardoned and admitted as a witness, that his evidence is inadmissible. Reports *W. P.* 1852, page 1349.

418. The word principal is not used here in its English law acceptation, but merely as a comparative adjective. It applies to those whose guilt is believed to be the deepest. Reports *L. P.* 1852, part 2, page 383. So, where a servant had written a forged deed by the order and in the presence of his master from a rough draft which the latter had furnished, it was held that he was not a chief offender, and that he was rightly admitted to give evidence. Reports *W. P.* 1853, part 1, page 69.

Meaning of
cipal.

419. A magistrate cannot offer a pardon to a person charged with participating in a crime committed in a district in which he has no jurisdiction. Const. No. 1232.

Jurisdiction.

420. The superintendent of police is to bring to the notice of the nizamut adawlut all instances which may come to his knowledge of the injudicious or improper exercise of the powers vested in the magistrates by this regulation. Reg. X. 1824, sect. 4, cl. 3.

Injudicious or
improper exercise
of power.

421. A magistrate, after committing a prisoner for trial, cannot legally quash his commitment, release one or more of the prisoners, and make him or them witnesses for the prosecution in the same trial. Const. No. 857.

Magistrate can-
not offer pardon
after commitment.

422. During the interval between the tender of pardon, and the recording of the approver's evidence at the sessions trial, he will remain as a prisoner in the magistrate's custody. C. O. No. 1, January 2, 1854.

Approver to re-
main in custody.

423. It is competent to the session judge, or to the nizamut adawlut, at the time of trial, to instruct the magistrate to tender a pardon to any accomplice or accessory, with a view of obtaining his evidence on oath as a witness on the trial. Reg. X. 1824, sect. 5, cl. 2.

Session judge or
nizamut may di-
rect the offer of
pardon.

424. But a session judge is not competent to admit a prisoner to give evidence against his fellows, after he has been put upon his trial before the sessions court. In a case in which this had been done, the court annulled the proceedings as regarded that prisoner, and directed him to be tried on the charge on which he had been committed. N. A. R. vol. 4, page 32. In a later case the *Western* court cancelled the pardon and the proceedings taken subsequently, but directed the judge to offer a fresh pardon through the magistrate, and to complete the trial; after which they convicted the other prisoner. Reports *W. P.* 1855, part 2, page 129.

But not, after
the prisoner has
been put on his
trial before the
sessions.

425. In a case of murder, however, in which one of the prisoners was convicted by the session judge of concealing the murder, the court directed that a free pardon should be offered to him on condition of disclosing the circumstances of the case within his knowledge; and on the completion of the trial the pardon was confirmed. N. A. R. vol. 4, page 255.

But the nizamut
directed the offer
to be made to a
prisoner after
conviction.

426. A magistrate is not competent to commit to the sessions, without reference to the court, a prisoner to whom a pardon has been tendered by order of the nizamut adawlut. N. A. R. vol. 2, page 289.

If the court di-
rects the offer,
magistrate is not
to comi

427. It is competent to the session judge at the time of holding the sessions, or to the nizamut adawlut if the final sentence is passed by the latter court, to direct the commitment of any person to whom a pardon has been offered under the above provisions, if it

The
judge or nizamut
may order the
committal of a

conforming to the conditions.

appears in evidence that such person has not conformed to the condition under which the pardon was tendered, either by wilfully concealing anything essential, or by giving false evidence or information with a view to the conviction of an innocent person. Reg. X. 1824, sect. 5, cl. 1.

And the judge must take the evidence of the approver before he can revoke the pardon.

428. And when a session judge, on the mere view of the record, directed the magistrate to commit a prisoner, whom he had made an approver, and without taking his evidence, on the ground that a pardon should not have been tendered, and that the prisoner had not fulfilled the condition on which it was tendered,—the court held that the judge had exceeded his authority; that he could not direct the committal without taking the approver's deposition, and then only in case the evidence showed that he had not conformed to the condition on which he was pardoned. Reports *L. P.* 1855, part 2, page 505.

But the magistrate cannot recall a pardon.

429. But the magistrate is not empowered to recall, of his own authority, a tender of pardon duly made and accepted. The proper course is to report the prisoner's non-fulfilment of the conditions to the session judge, and to be guided by his instructions. *N. A. R.* vol. 5, page 76.

may

430. It is competent to the nizamat adawlut to revise the proceedings of the magistrate in any case in which a pardon is tendered to an accomplice or accessory, and to annul the orders passed on such proceedings, if it appears that a pardon has been granted on insufficient grounds. Reg. X. 1824, sect. 5, cl. 3.

In such case his evidence not to be used against the prisoner.

431. The statement made by the prisoner before a magistrate on conditional offer of pardon cannot be received as evidence against him, if committed for trial for the original offence on the ground of his having failed to fulfil the conditions under which the pardon was tendered to him. Const. No. 1041.

Example.

432. An approver having been committed by order of the session judge on the original charge, on the ground of his having failed to fulfil the conditions of the pardon tendered to him, and convicted, the court directed his discharge without punishment, not seeing reason to suppose that he had suppressed any facts within his knowledge. *N. A. R.* vol. 3, page 84.

Such powers not vested in assistants.

433. The powers granted by the above provisions to magistrates and joint-magistrates are not extended to the assistants to the magistrates. Reg. X. 1824, sect. 6.

A qualified pardon may be offered to thugs.

434. A qualified pardon, to be ratified by government, and extending only to exemption from capital punishment and transportation and to indulgence in confinement, may be offered to any thug from whom there is reason to expect that useful information may be procured, on condition of his making a full and ingenuous confession. This pardon may be offered either to persons convicted or to those not yet tried; but in the latter case the proposed approver must invariably be committed for trial on the charge of having been guilty of the offence made punishable by Act XXX. 1836; and it is to be explained to him, that, if he pleads guilty to that minor offence, he will not be put on his trial for any capital crime which he may have committed as a thug. Before committal a faithful narrative of his life of crime, entering into as full a detail as possible, is to be placed on record, it being

explained to him at the time that for any wilful omission on his part he will forfeit the qualified pardon. A few thug approvers also should be examined as to his being a real thug. C. O. No. 247 of vol. 2. *L. P.*

435. A similar offer may be made to any dacoit on the condition, 1st, of making a full confession of all the dacoities in which he has been engaged; 2nd, of mentioning truly the names of all his associates in crime, and assisting to the utmost in his power in their arrest and conviction. Such exemption is to be forfeited, if he acts contrary to these conditions; conceals any of the circumstances of the dacoities in which he has been engaged; screens any of his friends or relations; attempts to escape; or accuses any innocent persons. C. O. No. 30 of vol. 3. *W. P.* And

436. But it must be shown that the prisoner was duly warned and made aware that he would be tried, and must endure a sentence of imprisonment for life as a consequence of his confession. Unless he has had such warning he cannot be convicted on a confession which has been obtained by means which amount to an improper influence. Reports *L. P.* 1855, part 2, page 339. Prisoner must be warned of the consequences of his confession, before he can be convicted on it alone.

437. Persons confined in a criminal jail on a requisition of security for good conduct, cannot be removed to another district for the purpose of being induced to give evidence as approvers before the authorities appointed for the suppression of dacoity. But if such prisoners consent to be so removed for the sake of giving evidence, the nizamat adawlut (a) may sanction their removal. Const. No. 1240. Security prisoners not to be removed, without their consent, in order to become approvers.

SECTION VI. OF WITNESSES.

438. In any criminal trials or matters cognizable by their respective courts the magistrates, the sessions courts, or the court of nizamat adawlut, are to issue a summons to the witnesses whose attendance and evidence is required, specifying at whose request the summons is issued, and requiring them to appear in the court on a day to be named in the summons, and there to depose concerning the matter in question.* But all summonses to witnesses in criminal cases are to be served by a chuprassy, peon, or other officer of the magistrate, or by a police officer, instead of being delivered to parties to be served on their own witnesses. *Beng. and Ben. Reg. L. 1803, sect. 2, cl. 1. Ced. Prov. Reg. VIII. 1803, sect. 25, cl. 1.* Summons to be issued for the attendance of witnesses, whose evidence is required.

* This is the rule prescribed to the

439. By section 6, Reg. IV. 1793, if a witness so summoned by the civil court does not attend on the day appointed, or attending refuses to give evidence, or to subscribe his deposition, the judge, in the first case, if it be proved to his satisfaction on oath that the witness is material to the cause is to issue an order to the nazir to seize and bring the witness **Non-attendance and recusance.**

Power of courts to compel such witnesses to attend and to give evidence.

(a) In the Lower Provinces, apparently, the sanction of government must be obtained.

Course to be
pursued with re-
cousant witnesses.

before the court, and is to impose on such witness not having attended, or refusing to give evidence, a fine not exceeding five hundred rupees, and to commit him to close custody until he consents to give his evidence and sign his deposition. The power of committing to close custody, and fining in a sum not exceeding five hundred rupees, any witness duly summoned, and, after receiving the summons, not attending as thereby required, or, although attending, refusing to give evidence and sign his deposition, is equally vested in the magistrates, and in the courts of sessions and nizamat adawlut. But witnesses attending and refusing to give evidence are, in the first instance, to be committed to custody only; and are to be called upon a second time, after such interval as may by the court be judged sufficient (not being less than one entire day); when, if the witness persists in his refusal to give evidence, he is to be fined in proportion to his situation in life (not exceeding the amount limited), and confined in the jail of the civil court until the fine be discharged, or for such period of imprisonment as may be fixed in lieu of fine under sect. 3, Reg. XIV. 1797; or, if the cause or trial is still depending, until he consents to give his evidence therein; after which, in such case, he is to be released, and the fine remitted. *Beng. and Ben. Reg. L. 1803, sect. 2, cl. 2. Ced. Prov. Reg. VIII. 1803, sect. 25, cl. 2.*

In what cases
proof is required
that the witness
is material to the
cause.

440. Proof on oath (not the prosecutor's oath exclusively) that the evidence of the witness is material to the cause, is required only in the case of a witness duly summoned, but not attending. In the case of a witness attending but refusing to give evidence, or refusing to sign his deposition, no new proof is to be called for that his evidence is material. Const. No. 159.

If resident in
appear-
to be

* See sect. 3,
Act XVII. 1856,
in para. 196.

441. A mofussil magistrate should compel the appearance of witnesses resident in Calcutta, whether British subjects, or natives, by warrant regularly endorsed by one of the judges of the supreme court,* under Act XXIII. 1840. C. O. No. 100 of vol. 4.

witness.

442. A magistrate may proceed as above against any witness, whose evidence he requires, although such witness has not been named on oath by the prosecutor or other person as acquainted with the circumstances of the case. Const. No. 78.

Person present
in court

then and there in
his possession.

443. Any person present in court, whether a party or not, may be called upon and compelled by the court to give evidence, and produce any document then and there in his actual possession, or in his power, in the same manner and subject to the same rules, as if he had been summoned to attend and give evidence, or to produce such document; and may be punished in like manner for any refusal to obey the order of the court.(a) Act II. 1855, sect. 25.

Plea of personal
disgrace not allow-
ed to excuse atten-
dance.

444. A plea of disgrace attaching to personal attendance in court, urged by a person summoned to give evidence, was held by the sudder dewanny adawlut to be inadmissible. *Carrau's Reports*, page 61.

Proclamation to
be made before
fine.

445. When a witness duly summoned has failed in attendance, and has subsequently evaded the warrant then issued for the seizure of his person; a proclamation should be issued requiring his attendance within a certain period; and if he does not attend within that period, the judge or other officer, should impose a fine not exceeding five hundred rupees, and

(a) This privilege is accorded to the court, and not to parties; and may therefore be refused. *Reports L. P. 1856, part 2, page 6.*

proceed to levy the fine by attachment and sale of his property. But unless the summons has been actually and personally served on such witness, he cannot be proceeded against either by fine, or by the issue of a warrant for his seizure, or by the attachment of his property. Const. Nos. 172, 465, 487, and 698.

The

446. The showing of a subpoena to a witness while passing by on an elephant, was held by the sudder dewanny adawlut to be a personal and actual service. *Carrau's Reports*, page 111.

Merely showing it to a witness is

447. No limitation is fixed for the confinement which the court may award in commutation of fines adjudged in such cases.* The court must exercise its discretion according to the circumstances of each case. A witness fined for refusing to swear is to be discharged on paying the fine, if the suit in which his evidence was required has been decided; or kept in confinement, whether he has paid the fine or not, if the suit be still pending, until he consent to give his evidence on oath as required. Const. No. 110.

Period of imprisonment in lieu of fine unlimited.

* But see section "Or

448. All fines imposed by the magistrate under the above rules, whether for the non-attendance of witnesses duly summoned, or for refusal to give evidence, are to be reported to the session judge; who, in the event of any representation being made to him relative to such fine, is to examine the magistrate's proceedings, and report† to the nizamat adawlut, if the fine appears immoderate, or to have been imposed on insufficient grounds. *Beng. and Ben. Reg. L. 1803, sect. 2, cl. 4. Ced. Prov. Reg. VIII. 1803, sect. 25, cl. 4.*

All such fines to be reported to session judge.

† Or may self reverse or modify under Act XXXI. 1841. See

449. Magistrates are carefully to prevent any abuses on the part of the subordinate native officers, such as confining witnesses in the *hajut* guard; and to punish such when brought to their notice. C. O. No. 59 of vol. 3, para. 3.

Witnesses are not to be ill treated.

450. A session judge was instructed that parties should not be placed in confinement when they will not tell all they know, in order to bring the facts of a case to light. N. A. R. vol. 6, page 18.

tell all they know.

451. Any person, whether a party to the suit or not, may be summoned to produce a document without being summoned to give evidence; and any person summoned merely to produce a document, shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same. Act II. 1855, sect. 26.

Persons may be summoned to produce documents; but need not attend personally.

452. When the court has just reason to be satisfied that a witness possesses documents material to the elucidation of the merits of a case, if such witness refuse or neglect to produce them, and fail to assign satisfactory cause, the court is warranted in proceeding against him as a recusant witness in conformity with the spirit of the above rules. Const. Nos. 270 and 757.

Rule to the production of account books and other documents.

453. If the attendance of any witness on the part of the prosecutor or the prisoner, whose evidence the law does not allow to be taken by commission, cannot be procured, or if any witness cannot be found, the session judge may postpone the trial, provided there appears sufficient cause for so doing. For the same reason the trial may be postponed a second time. But if the judge and his law officer are of opinion that the evidence of any

In the absence of a witness judge may twice postpone the trial;

witness, who is absent, is not necessary, the trial is to be completed without the evidence of such witness. *Beng. Reg. IX. 1793, sect. 49. Ced. Prov. Reg. VII. 1803, sect. 17.*

then 454. After the trial has been twice postponed, the prisoners should be acquitted, if the magistrate is unable to lay before the judge evidence sufficient for their conviction. *Const. No. 200.*

But trial need not be postponed if witness is confined for refusing to give evidence.

455. But it is not necessary that any trial before the sessions court should be postponed for the evidence of a witness confined under the above rules (for refusing to give evidence); unless the judge thinks it proper to postpone it on this account under the discretion vested in him by sect. 49, *Reg. IX. 1793*; nor is it necessary to postpone the decision of any case, civil or criminal, for the evidence of a witness so confined, beyond such period as appears proper to the court. *Beng. and Ben. Reg. L. 1803, sect. 2, cl. 3. Ced. Prov. Reg. VIII. 1803, sect. 25, cl. 3.*

In commitments.

Witnesses on the part of the prosecution.

456. In cases committed to the sessions, magistrates are to be careful, in taking recognizances from witnesses required to give evidence for the prosecution, that such is not taken from persons who appear to have no knowledge of the case, and whose evidence therefore cannot be requisite on trial. *C. O. No. 304 of vol. 1.*

Prisoner committed is examined in his defence.

457. When a prisoner is committed, or held to bail, for trial before the sessions, the magistrate is to question him, immediately after passing the order of commitment, whether he wishes to have any witnesses examined in his defence before the sessions court; and in the event of his answering in the affirmative, is to cause a list of the witnesses named by the prisoner, specifying their designations and places of abode, to be taken down and recorded upon his proceedings; or, in the event of the prisoner's replying in the negative, is to cause his reply to that effect to be recorded on his proceedings for the information of the sessions court.*

See section Of

Such persons to be summoned;

458. The magistrate is to issue the customary process to cause such witnesses to attend at the time fixed for the trial of the persons in whose behalf they are summoned. *Reg. IX. 1793, sect. 12. Ced. Prov. Reg. VI. 1803, sect. 12.*

and any others whom he may name at any time before the sessions.

459. Also, in the event of any such person, at any time before the sessions, desiring the examination of any witnesses upon his trial, although the same may not have been named by him at the time of his being committed, or held to bail, the magistrate is to be careful to cause the attendance of such witnesses, as well as of those before named, at the time fixed for the trial. *Beng. Reg. IX. 1796, sect. 3. Ben. ditto, sect. 5. Ced. Prov. Reg. VI. 1803, sect. 33.*

Lists of witnesses summoned to be sent with the calendar to sessions.

460. By section 14, *Reg. IX. 1793*, (*Ced. Prov. sect. 14, Reg. VI. 1803*), the magistrate is required to submit to the sessions, with the proceedings on each trial, lists of the witnesses summoned at the requisition of the prosecutor or prisoner, specifying those who are in attendance, and such as are absent with the cause of their non-attendance. These lists are to be accompanied with the original returns made to the magistrate by the nazir, and person deputed on his part to serve the summons on any absent witness; and the nazir, and person so deputed, are to be kept in attendance on the sessions court to answer any interrogatories

which the judge may put to them. And the judge is expected in every instance to make such enquiry as to satisfy himself, as well as the nizamut adawlut in referrible cases, that all due measures have been taken to cause the attendance of the whole of the witnesses both on the part of the prosecutor and of the prisoner. *Beng. Reg. IX. 1796, sect. 4. Ben. ditto, sect. 5. Ced. Prov. Reg. VI. 1803, sect. 14.*

And judge is to see that due measures have been taken to cause the attendance of all.

461. In the event of the absence of witnesses for the defence, it is the duty of the sessions judge to issue such orders as may appear calculated to secure their appearance, if the prisoners are still desirous of having their evidence. In a case in which this was not done, and the case was closed without further enquiry, the proceedings were returned that the omission might be supplied. *N. A. R. vol. 5, page 94.*

And to issue orders calculated to secure their appearance.

462. On a trial before the sessions, if the prosecutors or witnesses are Mahomedan or Hindoo women of a rank and situation in life, which, according to the customs and prejudices of the country, would render it improper to compel them to appear in a court of justice, and if their evidence is deemed necessary, and the case is of such a nature as to admit of its being taken by commission, the judge is not to require the attendance of such women, but is to depute persons to take their evidence. *Beng. Reg. IX. 1793, sect. 48. Ced. Prov. Reg. VII. 1803, sect. 16.*

If witnesses are Mahomedan or Hindoo ladies of rank.

463. It is held as a general rule, that the examination of absent witnesses cannot be received in a criminal trial, and that their personal attendance is necessary. *Const. No. 1280.*

witnesses.

464. And the evidence of witnesses for the prosecution in a sessions trial cannot be taken except in the presence of the accused. *Const. No. 658. N. A. R. vol. 1, page 300.*

As a general rule such is not available on a criminal trial;

465. But the evidence of any person on oath before the magistrate, duly attested and proved, would be available as evidence on the trial in case of the death or unavoidable absence of such person. *C. O. No. 42 of vol. 3.*

except in the case of death or unavoidable absence.

466. It is lawful for any court and the several judges thereof, in every civil proceeding depending in such court, upon the application of any of the parties to such proceeding, to order the examination, upon interrogatories or otherwise, before any officer of any such court, or other person or persons named in such order, of any witnesses within the jurisdiction of the court where the proceeding is depending,—or to order a commission to issue to any subordinate court for the examination of such witnesses upon interrogatories or otherwise,—or to order a commission to issue to any other court for such examination of witnesses at any place out of such jurisdiction,—and to give such directions for taking such examinations as appear reasonable and just. Any court to whom such commission is directed, is to take the examination in open court in all cases, where witnesses are able to attend in court, and are not exempted from attendance by law, absolutely, or at the discretion of the court. Under special circumstances such commissions for taking evidence out of jurisdiction, may be directed otherwise than to a court. *Act VII. 1841, sect. 2.*

Commission to be issued to officer of court, or other person, within jurisdiction, or to a subordinate court;

or to any court beyond jurisdiction.

or to any beyond jurisdiction.

467. When an order is made for the examination of witnesses within the jurisdiction of the court, such court or any judge thereof may command the attendance of any person to be named in the order, and may direct the attendance of any such person to be at his own place

If within diction, the

required at the court or elsewhere.

Disobedience on it-

Re-imbusement of expenses of witness.

Examinations to be taken on oath.

False evidence therein perjury.

Court to satisfy itself with the reason for the non-attendance of witness;

and to enquire for his place of residence, and the nearest court thereto.

The commission to be directed to such court; but if doubt, to judge of district;

who may direct it to subordinate

Deposition so taken not evidence without consent unless deponent is beyond jurisdiction, or dead, or sick, or distant more than fifty coss, or exempted from personal appearance, or at discretion of court even though such cause has ceased.

If deposition is duly certified, proof of the signature of such certificate is not required.

Such commissions may be executed within limits of supreme court; and are to be directed to court of requests.

They may also be executed within territories.

of residence or elsewhere, if necessary or convenient, and to produce all necessary documents and papers. Wilful disobedience to any such order is to be deemed a contempt of court, and is punishable as in other cases of refusing or neglecting to give testimony. Every person whose attendance is required under this Act is entitled to the like payment for expenses and loss of time as upon attendance in court in cases where such expenses are allowed. Act VII. 1841, sect. 3.

400. All such examinations are to be taken on oath, or affirmation, where an affirmation is admissible or required. And any person wilfully and corruptly giving any false evidence, or procuring such to be given, is to be deemed guilty of perjury, or subornation thereof. Act VII. 1841, sect. 4.

459. Before issuing any order or commission under this Act, the court or judge is to be satisfied that there is good reason for believing that the witness will be unable to attend at the usual time for examination by reason of absence from the jurisdiction, sickness, or other cause allowed by law; and is to make particular enquiry as to the residence of the witness, and as to the court (of the same or inferior degree) which is nearest to such place of residence; and the commission is ordinarily to be directed to such court of equal or inferior degree as may most conveniently execute the same. But, if there is doubt as to the most convenient court, the commission may be directed to the judge having jurisdiction in the district, within which it is to be executed; and such judge may at his discretion execute the commission in his own court, or direct it to any subordinate court in his district, which is to have the same effect as if it had in the first instance been so directed. No deposition taken under this Act, except as hereinafter mentioned, is to be read in evidence without the consent of the party against whom it is offered, unless it is proved that the deponent is beyond the jurisdiction of the court,—or dead,—or unable from sickness or infirmity to attend to be personally examined,—or distant without collusion more than fifty coss,—or exempted by law absolutely or at the discretion of the court from personal appearance,—or unless the court at its discretion dispenses with the proof of any of the above circumstances,—or authorizes the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such deposition have ceased at the time of reading it; and after the witness has been produced and has delivered his testimony, the court may at its discretion authorize the reading of the deposition. All depositions taken under this Act, being duly certified, may be read at the discretion of the court without proof of the signature to such certificate. Act VII. 1841, sect. 5.

470. Any court, other than one of Her Majesty's courts, or any judge thereof, may issue such commissions and orders to be executed within the local limits of the jurisdiction of Her Majesty's court; and all such commissions or orders, except when directed otherwise, than to a court, are to be directed to a court of requests having jurisdiction within such limits or any part thereof. Act VII. 1841, sect. 6.

471. Such commissions and orders may be issued for execution within the territories of princes and states in alliance with the Company; and all persons therein, being in the

service of the Company, are required to pay obedience thereto ; and for disobedience thereof, on being found within the jurisdiction of the court or judge issuing such commission or order, are punishable in like manner as if such offence had been committed within such jurisdiction ; and for giving false testimony under the same are punishable by any court of justice within the territories of the Company. Act VII. 1841, sect. 7.

Punishment of

472. When the evidence of an absent witness is required out of the jurisdiction of the court, in which the proceedings for which the evidence is wanted are pending, and the commission is directed to any court, such court may punish the wilful disobedience of any such order as aforesaid as a contempt, notwithstanding it has not itself made such order, with the same amount of punishment as in other cases of refusing or neglecting to give testimony. Act VII. 1841, sect. 8.

Disobedience of orders of court executing commission.

473. When the evidence of a prisoner confined in another district is indispensable, the court requiring it is to request the magistrate of the district in which the prisoner is confined to send him to such court, informing the nizamut adawlut of the step thus taken ; and it is competent to a magistrate, on such emergent requisition, to forward the prisoner, reporting at the same time, for the information of the nizamut adawlut, his compliance with the requisition, and eventually the prisoner's return to his jail. C. O. No. 58 of vol. 3, *W. P.*

When the evidence of a prisoner in another district is required.

474. The magistrates are to pay to all prosecutors and witnesses, who appear to be actually in need of such assistance, a daily allowance of two annas each, during their attendance on the sessions, and the same allowance for as many days as in their opinion may be sufficient for such prosecutors and witnesses to come from, and return to their respective homes. *Beng. Reg. IX. 1793, sect. 26. Ced. Prov. Reg. VI. 1803, sect. 26.*

Indigent prosecutors and witnesses.

Diet money to be paid daily.

475. This allowance is not to be given indiscriminately to all prosecutors and witnesses in attendance on the sessions ; but is to be restricted to such persons, attending the sittings of the session judge, as are really indigent, especially when they have been long detained from their usual occupations. C. O. No. 91 of vol. 1.

But only to those really indigent.

476. All witnesses to confessions, whether before the police or magistrates, are to have their expenses paid for attendance on the sessions trial, at the rate laid down in sect. 26, Reg. IX. 1793. C. O. No. 74 of vol. 4. *L. P.*

Witnesses to confessions to be always paid.

477. The magistrates, in paying the prescribed allowance to indigent prosecutors and witnesses, are to be careful to ascertain the actual attendance of the parties on the court ; and are to establish such checks, as appear most effectual, to guard against overcharge by the native officers. (a) The bills for diet money are to be countersigned by the judge. C. O. No. 75 of vol. 1.

Magistrate to ascertain actual attendance.

478. At the commencement of a trial before the sessions, the judge is to ascertain what witnesses mentioned in the calendar are in attendance, and to make a mark opposite the names of the absentees : and, on the termination of the trial, having demanded from the magistrate's nazir a statement of his account for the diet money, he is to have the persons

Check blished by judge

(a) A form of a register of subsistence money has been prescribed for the use of officers in charge of sub-divisions. See Appendix B. No. 29.

stated to have received it brought before him, and to direct whatever may be due to them to be paid in his presence. C. O. No. 125 of vol. 2.

PETTY CASES.

process to be
without
of diet

479. No process is to be issued for the attendance of witnesses on any charge of adultery, fornication, calumny, abusive language, slight trespass, or inconsiderable assault, unless the person by whom such charge is preferred, deposits in the hands of the nazir a sufficient sum for the maintenance of the witnesses who may be summoned on his application (being persons residing at a greater distance than five coss from the magistrate's cutcherry) for their support, at such rate as may be fixed by the magistrate in each case, not being however in any instance less than one anna, or more than three annas, per day for each witness. Reg. III. 1812, sect. 2, cl. 1.

Magistrate may
regulate the amount
of diet-money to be
deposited before
taking out process.

480. It is lawful for magistrates to regulate the amount of diet-money required for witnesses in petty cases, with reference to the probable period such witnesses may have to be in attendance; and in the event of prolonged detention of witnesses to direct the deposit of any further sum which to the said magistrates may seem requisite. Act VII. 1846.

When diet money
is to be lodged.

481. This rule does not require the subsistence money of witnesses to be lodged, until the prosecutor is desirous of taking out process to procure their attendance;—and the witnesses should not be summoned, until the magistrate is prepared to take up the case. Const. No. 221.

Diet money to be
paid only for the
period of absence
from home.

482. If the detention of the witnesses from their homes is less than the period fixed, they are entitled to subsistence only during the period of their absence in attending at the magistrate's cutcherry, in proceeding thither, and in returning to their homes; and the surplus of the deposit is to be returned to the prosecutor. Reg. III. 1812, sect. 2, cl. 2.

Further deposit
to be made at the
expiration of the
fixed period, or
the case to be
dismissed.

483. On the other hand, if the detention is for more than the period fixed, the prosecutor is to deposit, at the expiration of it, such further sum as is necessary for the subsistence of the witnesses during a further prescribed period, until the case is disposed of, or the witnesses discharged. If the prosecutor fails to make the prescribed deposit, the complaint is to be immediately dismissed. Reg. III. 1812, sect. 2, cl. 3.

These rules are
applicable only to
petty offences; in
other cases go-
vernment to pay.

by

484. The foregoing provisions do not apply to cases of *mayhem*, actual affrays, or tumultuary assemblies of the people, requiring the immediate interposition of the police for the maintenance of public tranquillity. In such cases, as well as in heinous offences, the subsistence of indigent prosecutors and witnesses is to be defrayed by government. If, however, a prosecutor in any instance, by an exaggerated and perverted representation of the case, procures process to be issued against any person for any such crime or misdemeanor, and it appears on inquiry that the case is nothing more than a trifling offence, such prosecutor is to be held accountable for whatever sum appears due for the subsistence of his witnesses on the principles stated above. Reg. III. 1812, sect. 2, cl. 4.

to keep
account of such
sums.

485. It is the duty of the nazir to keep an accurate and particular account of all sums received and disbursed by him on account of the subsistence of witnesses under these rules, which is to be inspected monthly by the magistrate or his assistant. Reg. III. 1812, sect. 2 cl. 5.

486. Magistrates are to conform strictly to the foregoing rules; and are to be careful to ascertain that indigent witnesses are, on all occasions, supported either by the prosecutor or by the state, during the time of their detention from their homes, whether the case is pending before the session judge or otherwise. All criminal charges are to be speedily disposed of, so that witnesses may be detained for as short a period as is practicable at the sudder station. C. O. No. 59 of vol. 3.

Magistrate to conform strictly to the above rules.
Indigent witness-

487. Magistrates are required to prevent the prolonged detention of witnesses, by taking care that no unnecessary delay occurs in their examination by the mohurirs, or in the perusal of their depositions and cross-examination by the magistrate. To this end all magisterial officers are required to keep a diary, in prescribed form,* which is to be prepared and filled up according to directions contained therein. C. O. No. 194 of vol. 3.

Detention of witnesses.

* v. Appendix B. No. 18.

488. To have all the chalans of witnesses summoned in criminal cases brought before the magistrate instead of their being, as is usual, taken to the nazir; and to receive so many chalans only as could probably be disposed of during the day, postponing any others presented by the witnesses till the next day; is a deceptive and wrong method of making the despatch of business appear greater than is actually the fact, and is strongly condemned. C. O. No. 1559, December 18th, 1854. *W. P.*

The diary should show truly the number of witnesses in attendance.

489. Subpoenas to prosecutors and witnesses are to be drawn out according to prescribed form,* and to be served by a single burkundaz. Darogahs are strictly prohibited from delivering summonses to parties or their agents, to be served on their own witnesses. Reg. XX. 1817, sect. 23, cl. 1.

Police.

Subpoenas how to be served.

* v. Appendix A. No. 9.

490. Prosecutors and witnesses, whose attendance is necessary at the criminal courts, are to execute mochulkas † before the police officers to appear before the magistrate on a specific day, which is to be the day whereon the accused is bound to appear, if admitted to bail, or expected to arrive at the magistrate's place of residence, if forwarded under custody:—the police officer, in whose presence the mochulka is executed, is to forward it with his report to the magistrate; and is to deliver to the prosecutor or witness a despatch addressed to the magistrate and drawn out in prescribed form,‡ which such person is to deliver himself to the magistrate, unaccompanied by any officer of police. Reg. XX. 1817, sect. 23, cl. 2.

Mochulkas to appear before magistrate.

† v. Appendix A. Nos. 88 and 89.

‡ v. Appendix A. No. 40.

491. Such mochulkas may be taken on plain paper. Const. No. 679. Reg. X. 1829, sched. B, art. 1.

To be taken on plain paper.

492. Police officers are prohibited from subjecting prosecutors to any degree of restraint, except when their complaints appear on inquiry to be false and malicious.§ Reg. XX. 1817, sect. 23, cl. 3.

Prosecutors not to be subjected to restraint.

§ v. ¶ 891.

493. Police officers are not to subject witnesses to any restraint or unnecessary inconvenience, nor to require them to give security for their appearance; but if a witness refuses to attend, or to execute the recognizance directed above, the police officer presiding at the thana may forward him under custody to the magistrate's court. Reg. XX. 1817, sect. 23, cl. 4.

Witnesses not to be subjected to restraint.

Maltreatment.

494. Any species of maltreatment inflicted on a witness by a police officer, landholder, or farmer, or by any other person whatever, with a view to procure information, subjects the offender to exemplary punishment on conviction before the magistrate or sessions court. Reg. XX. 1817, sect. 19, cl. 2.

Power to compel attendance.

495. Police officers do not possess authority to compel the appearance before them of persons acquainted with the commission of offences. Const. No. 189.

SECTION VII. OF OATHS.

The Mahomedan and Hindoo religions do not prohibit the taking oaths.

496. The kazi-ul-kuzat and muftis of the nizamat adawlut have declared that there is no prohibition against an oath to the truth being taken by Mussulmans in any case; although it is not required by the Mahomedan law to give validity to evidence in judicial cases. And from the report of the pundits of the sudder dewanny adawlut, it appears, "that the Hindoo law not only authorizes, but requires, the oaths of witnesses in civil and criminal cases; and prescribes the form in which oaths may be administered to persons of various tribes, regard being had to the importance of the matter in dispute: that no person of whatever rank is prohibited from taking an oath in a court of justice; nor is there any objection grounded on law or usage against administering the oaths prescribed by law; that Brahmins, rigidly observant of the duties of the priesthood, are exempted by one ancient author (Gotum) from taking an oath, and may therefore be heard as witnesses upon their simple affirmation; but that the other authorities of the law, which do not contain this exemption, prevail over the single text of Gotum, and declare no dispensation in favor of any description of persons, and pronounce no form of oath sinful, excepting as far as the soodra cast is restricted from handling certain idols; and that the form of swearing by the water of the Ganges, and by copper and toolsy, is virtually sanctioned by many shasters; but that other prescribed forms are of equal validity; and that all oaths, made by laying the hand on any symbol or image of the deity, have the same obligation." *Beng. and Ben. Reg. L. 1803, preamble. Ced. Prov. Reg. VIII. 1803, sect. 25, cl. 1.*

Form of affirmation to be made by Hindoos and Mahomedans.

497. Instead of any oath or declaration formerly authorized or required by law, every individual of the Hindoo or Mahomedan persuasion is to make affirmation to the following effect:—"I solemnly affirm in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth." Act V. 1840, sect. 1.

Mode of making.

498. It is not required that the deponent should sign his name to any written affirmation; he should merely read it out in court, or it should be read out to him and repeated by him before giving his deposition; and at the head of his written deposition it should be

Translations.

* v. Appendix C.
as 5 and 6.

stated that he was sworn according to the provisions of Act V. 1840. Translations of the affirmation are given in Bengalee and Urdu for Mahomedans and Hindoos;* if it is

necessary to use the Bengalee form for Mahomedans, the term used to designate the Supreme Being, by persons of that persuasion, is to be substituted. C. O. L. P. No. 44, W. P. No. 48 of vol. 3.

499. The evidence of witnesses should not be taken down prior to the administration of the solemn declaration under Act V. 1840; the wording of which, "what I *shall* state shall be truth," is rendered unmeaning, if it be administered *subsequently*, and not *previously* to the record of the deposition. C. O. No. 104, January 27th, 1854. W. P.

Affirmation to be made before evidence is written.

500. The word "huluf," which means an oath, is not to be used as the translation of the affirmation, substituted for an oath by Act V. 1840, in recording the evidence of witnesses in the criminal courts. The affirmation is to be rendered by the corresponding term "ikrar." C. O. No. 93 of vol. 4, W. P. The prescribed Bengalee term is "protigya." Reports L. P. 1852, part 1, page 70.

Translation of word affirmation.

501. Police officers are in the same manner to make use of the same form in all cases, wherein they are authorised by the regulations to take a deposition on oath. C. O. No. 117 of vol. 3.

Police officers to use the same form.

502. A police mohurir has no power to administer oaths except in the absence of the darogah; and the latter has no authority to delegate his power of administering oaths when present. N. A. R. vol. 1, page 386.

Police mohurir cannot administer oath.

503. If any person, making such affirmation, wilfully and falsely states any matter or thing, which if sworn to before the passing of this Act would have amounted to perjury,—he is to be subject in all courts to the same punishment, to which persons convicted of perjury were subject before the passing of this Act. Act V. 1840, sect. 2.

Such affirmation has the same force as an oath in regard to perjury.

504. Any person causing or procuring another to commit such offence is to be subject in all courts to the same punishment, as persons convicted of subornation of perjury before the passing of this Act. Act V. 1840, sect. 3.

And subornation of perjury.

505. The punishment for perjury is not incurred, when the oath has been taken before a person not duly authorized to administer it; or in a place in which a court cannot legally be held; or when the deponent has been improperly required to give evidence on oath. See chapter on perjury.

506. This Act does not extend to any declaration or affirmation made in any of Her Majesty's courts of justice. Act V. 1840, sect. 4.

Act does not extend to H. M.'s courts of justice.

507. The words in sect. 4, Act V. 1840, "Her Majesty's courts of justice" are not to be deemed to mean or extend to the courts of the justices of the peace. Act II. 1847.

Justices of peace are to administer oaths according to Act V. 1840.

508. The commanding officer of any military station occupied by troops in the service of the Company, is competent to administer, within the limits of such station, any oath which a justice of the peace is competent to administer within the said territories; and such oath is of the same effect as if taken before a justice of the peace. Act IX. 1836.

Commanding office station minister.

509. A military court of inquiry has no power to administer an oath. N. A. R. vol. 3, page 171.

But not military court.

SECTION VIII.

OF EVIDENCE.

Rules for examination.**BY WHOM.**

Judge, and native judicial officers.

510. Every witness or prisoner examined by a session judge is to be examined exclusively and entirely in the presence of that officer; and the same rule is applicable to all native judicial officers entrusted with criminal jurisdiction. C. O. No. 220 of vol. 2, para. 2.

Magistrates.

511. A pressure of public business may occasionally oblige magistrates, joint magistrates, and their assistants, to empower their native officers to record the depositions of parties in cases before them; but such proceedings are to be confined entirely to matters of minor importance. The examinations of prisoners are in all cases to be taken exclusively and entirely before the magistrate, or other officer, without any preliminary or partial examination before a native officer; and in all instances depositions are to be taken *in the presence* of the European officer presiding. C. O. No. 58 of vol. 1; and No. 220 of vol. 2, para. 4.

Must be in the presence of the presiding officer.

LOCALITY.

512. A deposition taken on oath in a private dwelling is illegal, and a charge of perjury cannot be sustained on such a deposition. Const. No. 627.

LANGUAGE.

to the de-

513. All examinations of parties and witnesses are to be taken down in the language and character, in which the person examined may desire to have it recorded. *Beng. and Ben. Reg. IV. 1797, sect. 7, cl. 2. Ced. Prov. Reg. VII. 1803, sect. 18, cl. 1.*

514. The rule originally prescribed in sect. 16, Reg. IX. 1793, that all examinations and depositions are to be written in the language in which the deponents are most conversant, is superseded by the above provision. Const. No. 204.

But must be in which delivered.

515. But officers are strictly prohibited from taking down the examination of parties or witnesses in any other language than that in which it is delivered. C. O. No. 220 of vol. 2, para. 7.

European witness.

516. The deposition of an English witness must be recorded in English, and a translation of it prepared by the court and annexed to it. Const. No. 1035.

CERTIFICATION.

517. The person examined, whether party or witness, is to be allowed to read the examination when finished; or, if unable to read, it is to be read to him; after which, if he admit the record to be correct, he is to affix his name or mark to it; and the officer, before whom it is taken, is to certify the same under his official signature on the original record; as well as on a translation thereof, to be annexed to the original, if it has not been taken in the vernacular. *Beng. and Ben. Reg. IV. 1797, sect. 7, cl. 2. Ced. Prov. Reg. VII. 1803, sect. 18, cl. 1.*

Deposition must be read over to

518. A person charged with perjury was acquitted because his deposition was not read over to him, and because it was not authenticated, under the preceding rule. Reports L. P. 1853, part 1, page 560.

519. No signature, or mark in lieu of signature, of a witness, is to be attached to the record of his deposition, until after such deposition has been read over to him. It is then to be attached *immediately below* such deposition, and is to be repeated on every occasion of the re-examination of the witness. C. O. No. 74 of vol. 4, *L. P.*

He must sign at the end.

520. Native judicial officers entrusted with criminal jurisdiction are to certify, at the end of each deposition or examination, in the Persian language, in the mode indicated in the note,(a) that the same has been taken in their presence. C. O. No. 220 of vol. 2, para. 5.

Native judicial officers.

521. The same rule is applicable to magistrates and other European officers; but in cases of a heinous nature, and in all cases in which a commitment may be made, the deposition or examination is to be certified in the English language, and in the following manner: for a witness or prisoner—"Taken before me (or taken before A. B. serishtadar, and duly explained in my presence) this 27th day of January 1837.—C. D. Magistrate." C. O. No. 220 of vol. 2, para. 6; and No. 11 of vol. 1.

Magistrates.

522. The following admonition is to be repeated to witnesses in the language which they best understand, immediately after they are sworn:—"In delivering your evidence under the oath now administered, you are required to declare the truth, the whole truth, and nothing but the truth! You are carefully to distinguish what you personally know as an eye-witness, or otherwise, from what you have heard from others; and are solemnly bound to answer all questions put to you on the trial before the court, without any regard to the prosecutor or prisoner, to the best of your information and belief." *Beng. and Ben. Reg. IV. 1797, sect. 7, cl. 6. Ced. Prov. Reg. VII. 1803, sect. 18, cl. 5.*

EXAMINATION.

ness.

523. Judges are to record upon their proceedings that the foregoing admonition has been repeated to the witnesses as above directed. They are also to remind witnesses of the admonition, whenever in the course of their examination there may appear occasion for it. C. O. No. 16 of vol. 1.

524. The court called the attention of the magistrates to an evil of a serious nature, which is to be observed in the manner in which evidence is often recorded. Several witnesses are brought forward to prove a particular point in a case, and their depositions are taken down by the same mohurir: when these depositions are read over, they will be found to be nearly identical, not merely as to the point at issue, but in the order of the narrative, the form of expression, and the description of the circumstances under which each witness happened to be present. The court request the serious attention of the magisterial authorities to this point, and they desire that every endeavour may be used to have the

Depositions should be recorded in the actual words of the deponent.

(a) منسکه صدر امین اعلیٰ (یا صدر امین یا مولوی یا پنڈت) عدالت ضلع فلان ام امروز
روبروی من زبان بندی فلان گواہ (یا اظہار مدعی یا مدعی علیہ) گرفته شد تحریرا فی التاریخ
فلان سنہ فلان
العبد

depositions recorded on each occasion in the actual words of the deponent. Magistrates will, however, find their time well employed, if, previously to the examination of the witness in any case, they make themselves sufficiently acquainted with the facts of the charge, so as to point out to the mohurir, who records the depositions, what evidence is material, thus enabling him to reject the garrulous and irrelevant histories of immaterial events, which are too often entered as part of the deposition. C. O. No. 16, June 21, 1855.

Leading questions to be avoided.

525. In the examination of witnesses, leading questions, suggesting an answer, or having a tendency to such suggestion, are to be avoided, and the interrogatories to them are to be proposed in such general terms as may bring forth all the information they possess, and lead to a discovery of the truth. With this view the parties are to be allowed to cross-examine the witnesses, and the presiding officer should also cross-examine them, when necessary. *Beng. and Ben. Reg. IV. 1797, sect. 7, cl. 3. Ced. Prov. Reg. VII. 1803, sect. 18, cl. 2.*

Cross-examination.

Particulars regarding deponent to be noted.

526. All examinations of parties and witnesses, besides the name of the person examined, are to specify the name of his or her father, and if a married woman the name of her husband, also the religion, caste, profession, and age; and the village and pergunnah in which they reside. *Beng. and Ben. Reg. IV. 1797, sect. 7, cl. 4. Ced. Prov. Reg. VII. 1803, sect. 18, cl. 3.*

Rule regarding circumstantial evidence.

527. When any stolen property, or instruments of violence stated to have been found upon the prisoners, or in their houses, are produced, the prosecutor and any witnesses brought to give evidence thereupon, are to be carefully examined relative to the identity of such property, or instruments recognized by them, and the circumstances of their being found. The principle of this rule is to be applied in all instances of circumstantial evidence to which it is applicable. *Beng. and Ben. Reg. IV. 1797, sect. 7, cl. 5. Ced. Prov. Reg. VII. 1803, sect. 18, cl. 4.*

Party allowed to cross-examine and discredit his own witness.

584.

528. The party at whose instance a witness is examined may, with the permission of such* court or person, cross-examine such witness to test his veracity, in the same manner as if he had not been called at his instance, and may be allowed to show that the witness has varied from a previous statement made by him. *Act II. 1855, sect. 30.*

Former statement to a witness.

529. In order to corroborate the testimony of a witness, any former statement made by such witness, relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, shall be admissible; and for that purpose a copy of any deposition or statement taken before any court, judge, justice of the peace, magistrate, or person lawfully exercising the powers of a magistrate, or before a commissioner or superintendent for the suppression of thuggee or dacoity, in the discharge of his duty, shall, if certified by such court, judge, or other officer above-mentioned, under his hand or the official seal of the court, or under the hand or official seal of such judge, to be a true copy of such deposition or statement, without further proof, be

received as *prima facie* evidence that such deposition or statement was made, and that it was made at the time and place, and under the circumstances, if any, which shall be stated in the certificate or on the face of the deposition or statement. Act II. 1855, sect. 31.

530. A witness shall not be excused from answering any question relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate such witness, or that it will expose, or tend, directly or indirectly, to expose such witness to a penalty or forfeiture of any kind. Provided that no such answer, which a witness shall be compelled to give, shall, except for the purpose of punishing such person for wilfully giving false evidence upon such examination, subject him to any arrest or prosecution, or be used as evidence against such witness in any criminal proceeding. Act II. 1855, sect. 32.

Witness bound

But such

531. But he may be arraigned on a crime admitted in the deposition, provided it be proved by other evidence. N. A. R. vol. 2, page 14. Reports L. P. 1852, part 1, page 695.

But that would not prevent his indictment on other evidence.

532. A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanor, and upon being so questioned, if he either denies the fact or refuses to answer, it shall be lawful for the opposite party to prove such conviction. Act II. 1855, sect. 33.

Witness may be examined as to conviction for felony.

533. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without such writing being shown to him; but, if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him. Provided always, that it shall be competent for the judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he shall think fit. Act II. 1855, sect. 34.

Cross-examination as to previous written statements; and use of them by judge.

534. A witness shall be allowed before any such* court or person aforesaid to refresh his memory by any writing made by himself or by any other person at the time when the fact occurred, or immediately afterwards, or at any other time when the fact was fresh in his memory, and he knew that the same was correctly stated in the writing. In such case the writing shall be produced and may be seen by the adverse party, who may, if he choose, cross-examine the witness upon it. Act II. 1855, sect. 45.

Refreshing memory of witness.
* See para.

535. Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the court, refer to a copy of such document, provided the court or person, under the circumstances, be satisfied that there is sufficient reason for the non-production of the original. Act II. 1855, sect. 46.

Court may admit a copy of document to be used to refresh memory.

536. Session judges are to be careful to notice on their proceedings any material difference between the depositions of the same witnesses before them and the magistrates; and are to question the witnesses thereupon and to record their answers; but the depositions taken before the magistrate are not to be read before the sessions court in the presence of

If witness in his deposition before magistrate not to

read in sessions
court, till witness
has given evidence.

the persons who gave the same, until they have been re-examined before the sessions court. *Beng. and Ben. Reg. IV. 1797, sect. 7, cl. 7. Ced. Prov. Reg. VII. 1803, sect. 18, cl. 6.*

Witness for de-

537. A judge has no authority to decline examining the witnesses of a defendant, of whatever nature their evidence may be, though he attaches no weight to their testimony. *N. A. R. vol. 6, page 12.*

cross examin-
ed if necessary.

538. Witnesses for the defence, like other witnesses, should be examined on the points to which they are summoned to testify, and cross-examined regarding statements made by them in answer to the prisoner's questions, if their statements appear to require it; and their personal knowledge of the circumstances which they are cited to prove should be closely scrutinized. *C. O. No. 2 of vol. 4. L. P. See section "of the sessions."*

Prisoner object-
ing to his own

539. If a prisoner objects to examine his own witnesses on the ground of their having been tampered with by the prosecutor, the session judge ought not to examine them. *Const. No. 1203. N. A. R. vol. 5, page 115.*

Evidence for pro-
secution must be
presence
accused.

540. The evidence of witnesses for the prosecution, even in proof of the prisoner's confession, in a trial in the sessions court cannot be taken in the absence of the accused. *C. O. No. 2 of vol. 4. L. P. See section "of the sessions."*

In a magistrate's
court prisoner may
recall witnesses for
prosecution.

541. Whenever a defendant, summoned after the taking of evidence for the prosecution, makes, upon his appearance, in whatever manner, a request that the witnesses, who were so examined before the issue of the summons, and before his attendance, should be called for, in order that they may be further examined before himself, whether as to the point of his recognition and identification, or as to any other point, it is the plain duty of a magistrate again to send for those witnesses, and to have them re-examined, in the prisoner's presence, as to any matter which he may indicate. And, *semble*, it is unnecessary to re-call the witnesses, if the defendant does not make such request. *Reports L. P. 1852, part 2, page 663.*

Witness accused
of perjury should
be examined on the
charge without
oath.

542. A witness accused of having given a false deposition on oath cannot be examined on oath as to the truth of such accusation, and then committed for giving false and contradictory statements; his defence should be taken without oath on a charge of perjury. *N. A. R. vol. 6, page 91.*

Strangers may
take notes of
evidence.

543. It is not a criminal offence, to take notes of the deposition of a witness under examination and to communicate them to other witnesses in attendance. *N. A. R. vol. 6, page 210.*

Competency.
Former convic-
tion.

544. No person, by reason of any conviction for any offence whatever, is incompetent to be a witness in any stage of any cause, civil or criminal, before any court in the territories of the East India Company. *Act XIX. 1837.*

545. If convicts are required to give evidence they should be examined on oath. *N. A. R. vol. 5, page 37.*

Witness previ-
ously convicted on
the same charge.

* 546. Under the provisions of the above Act, the conviction of a person of a criminal offence cannot be considered as a bar to his giving his evidence against or in favor of his

supposed accomplices in the same crime(*a*); but it rests of course with the judge to place such reliance on the evidence as it appears to deserve. Const. Nos. 1117 and 1173.

547. So, it was considered no sufficient reason for rejecting evidence to the defence, that the witnesses named by the prisoner had been accused before the magistrate of participating in the offence charged, but released by that officer. N. A. R. vol. 2, page 413. Reports *W. P.* 1856, part 1, page 31.

or previously
accused and ac-
quitted.

548. There is no legal impediment to the admission of a person to give evidence against his accomplices whether he be convicted and sentenced, or whether the trial as regards him is under reference to the nizamat adawlut. Reports *L. P.* 1852, part 2, pages 383 and 491.

Evidence of ac-
complices is always
admissible.

549. Of three persons who committed a murder in concert, one was apprehended at the time; and, having been convicted on circumstantial evidence only, was sentenced as an accessory to transportation for life. Subsequently the other two were arrested, and being convicted on the direct evidence to the murder of the accomplice already under sentence, in addition to the circumstantial evidence produced at the former trial, they were sentenced to death. Reports *L. P.* 1855, part 2, page 582.

Capital sen-
tence had on the evidence
of an accomplice
previously con-
victed.

550. The following persons only shall be incompetent to testify: 1. Children under seven years of age who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly. 2. Persons of unsound mind, who, at the time of their examination, appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly; and no person who is known to be of unsound mind shall be liable to be summoned as a witness, without the consent previously obtained of the court or person before whom his attendance is required. Act II. 1855, sect. 14.

Persons incom-
petent to testify.

551. Any person who by reason of immature age or want of religious belief, or who by reason of defect of religious belief, ought not, in the opinion of such court* or person, to be admitted to give evidence on oath or solemn affirmation, shall be admitted to give evidence on a simple affirmation, declaring that he will speak the truth, the whole truth, and nothing but the truth. Act II. 1855, sect. 15.

Children and per-
sons of defective
religious belief to
testify on simple
affirmation.

* See para. 584.

552. In all such cases the alleged and apparent age of the person, and the queries and answers which have led to the conclusion that he is or is not, of capacity to be sworn, are to be fully and exactly recorded upon the proceedings. C. O. No. 23, November 24, 1855, *L. P.*, and No. 1 of vol. 2.

Grounds to be
stated, on which
witnesses are ad-
mitted on simple
affirmation.

553. Such declaration should be recorded in the same way as the administration of an oath is set forth, at the commencement of the deposition. Reports *L. P.* 1856, part 1, page 869.

554. The provisions in the last preceding section as to witnesses shall apply to testimony given by affidavit or otherwise in writing as well as to testimony orally delivered. Act II. 1855, sect. 16.

Provisions as to
witness to apply to

(*a*) This decision of course reverses the precedent in N. A. R. vol. 2, page 25.

Punishment for giving false evidence.

555. Any such witness wilfully giving false evidence shall be subject to be proceeded against in like manner, and to suffer, if convicted, the same punishment as if he had been sworn and had committed wilful and corrupt perjury. The indictment or charge shall be varied so as to meet the case. Act II. 1855, sect. 17.

No incompetency from interest in suit.

556. No person shall, by reason of any interest in the result of any suit or of any interest connected therewith, or by reason of relationship to any of the parties thereto, be incompetent to give evidence in such suit. Act II. 1855, sect. 18.

Leprosy.

557. The fact of a witness being afflicted with leprosy does not bar the admission of his evidence. Const. No. 726.

Wife against husband.

558. The testimony of a wife against her husband may be received in corroboration of other evidence; N. A. R. vol. 1, page 144; but the practice of summoning the wife, or other near relation, of a prisoner as a witness for the prosecution, excepting in case of urgent necessity, is highly objectionable. N. A. R. vol. 2, page 149; and vol. 6, page 27.

Near relation.

559. The evidence of near relatives of the prosecutor is admissible in criminal trials. N. A. R. vol. 3, page 309.

Wife in favor of husband.

560. The wife of the prisoner being brought forward to substantiate his defence (grounded on the murdered person having been detected in the act of adultery with her), her evidence was held to be inadmissible on account of the existing relationship between the parties. N. A. R. vol. 1, page 182. But under sect. 14, Act II. 1855 (para. 550) she is not incompetent to give evidence.

No new trial for rejection or improper reception of evidence.

561. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the court before which such objection is raised, that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision. Act II. 1855, sect. 57.

Act not to render inadmissible evidence now admitted in the Com- courts.

562. Nothing in this Act contained shall be so construed as to render inadmissible in any court any evidence which, but for the passing of this Act, would have been admissible in such court. Act II. 1855, sect. 58.

Value.

Contradictory evidence.

563. In a case of affray attended with murder, the witnesses for the prosecution named before the sessions court as the actual perpetrator of the murder a particular prisoner, of whom they had made no mention before the magistrate: such variation was considered by the law officers, and the court, sufficient to nullify the whole of the evidence. But where the witness on trial varied from his evidence, as given in the thana report, only as to the extent of his personal knowledge, the variation was not considered material by the court. N. A. R. vol. 1, page 236; and vol. 2, page 17.(a)

(a) The terror of a gang of robbers, not apprehended, may sometimes deter persons, who have seen them commit a robbery, from giving information against them. But if, when questioned by the local officer of police, immediately after the robbery, they deny having recognized any of the robbers, their subsequent testimony, in opposition to such denial, must be received with the utmost circumspection; the more especially as it is a frequent practice, when persons of notorious or suspected character have been apprehended, to adduce false witnesses for their conviction of some specific offence. N. A. R. vol. 1, page 8, note.

564. The best evidence which can be procured must be adduced. Thus the lists of persons on whom processes had been served were not admitted until proved by the persons who kept the record of the issue of processes. Reports *W. P.* 1854, part 2, page 661.

Best evidence must be adduced ;

565. A girl, having eloped from the house of her parents, returns some time after, and asserts that she is their daughter: the denial of her identity by the parents is not held conclusive, as they are obviously interested in disclaiming the relationship. *N. A. R.* vol. 1, page 194.

but may be set aside, if necessity has interest.

566. When the session judge argued for conviction of the prisoners from the futility of the defence, the court observed that attention should always chiefly and carefully be directed to the goodness of the evidence for the prosecution ; because, if the charge be not fully and satisfactorily established, it signifies little how worthless soever the defence may be. In this country persons charged with offences (supported by good or bad proof) never trust to their innocence, they invariably set up an alibi, or make a counter-charge reckless of its silliness or incredibility. Reports *L. P.* 1851, page 392.

Proof must depend on the goodness of the evidence for the prosecution.

567. Hearsay evidence is not admissible ; and inadmissible evidence should not be recorded, as it tends to create impressions in the mind of the judge unfavorable to the prisoner. Reports *L. P.* 1852, part 1, page 174 ; and 1855, part 2, page 894.

Hearsay evidence inadmissible.

568. Except in cases of treason, the direct evidence of one witness, who is entitled to full credit, shall be sufficient for proof of any fact in any such court or before any such person.* But this provision shall not affect any rule or practice of any court that requires corroborative evidence in support of the testimony of an accomplice or of a single witness in the case of perjury. Act II. 1855, sect. 28.

Evidence of one witness sufficient proof.

* See para. 584.

569. But the trial must be referred for the orders of the court, under sect. 5, Reg. XVII. 1817, if the *futwa* acquits on the ground of one witness being insufficient under the Mahomedan law. Const. No. 634. C. O. No 48 of vol. 2.

570. It is proper that the evidence of all parties present at the commission of a heinous crime should be taken by the magistrate for comparison and check if necessary, though it is not requisite that the whole of the parties so examined should in the first instance be sent up as witnesses to the sessions. The session judge should have information of their depositions before the police, so that he may send for them if any point of doubt should arise. There might be instances in which suspicion might arise in the absence of statements from all parties present at the time of the alleged perpetration of a crime. It is necessary therefore to note on the record the cause of the non-examination of any such witnesses. Reports *L. P.* 1852, part 1, page 31.

But the evidence of all eye-witnesses must be taken by magistrate.

571. It is held as a general rule, that the examination of absent witnesses cannot be received in a criminal trial, and that their personal attendance is necessary. It seems however that evidence taken on oath before the magistrate, and duly attested and proved (as required in C. O. No. 54 of vol. 2*), is available on trial before the sessions in the event of the unavoidable absence of the witness. On this account magistrates are required invariably to take the evidence of the civil surgeon on oath. Const. No. 1280. C. O. No. 42 of vol. 3. But they cannot call upon the chemical examiner to make an affidavit or a verbal deposition

Evidence of an absent witness not

evidence duly attested and proved.

* n. § 517, and section "Of sessions."

Chemical examiner.

before the chief magistrate of Calcutta, regarding any matter referred for examination, as such affidavits and depositions are not legal evidence on account of the absence of the accused at the time of making. C. O. No. 146 of vol. 3. For rules regarding absent witnesses, see para: 463 *et seq.*

Abstract records of statements of witnesses made before darogah are not evidence; but may be used as other memoranda to refresh memory of persons called to prove such statements.

572. The abstract record of statements made by witnesses to a police darogah (which are not taken on oath, nor recorded separately, but are merely incorporated in his reports) are inadmissible as independent depositions, or even as records of depositions, by which the accuracy or consistency of the statements made by those witnesses in court may be tested. But the darogah may be called to prove the statements made before himself; and may be allowed to refer to such abstracts, viewed as memoranda taken at the time or soon afterwards, in order to refresh his memory. Reports *L. P.* 1856, part 2, page 6.

Evidence should be taken, whenever it is possible, in the presence of the accused.

573. It is irregular to commit prisoners for trial on evidence taken in their absence before their apprehension, as they have no opportunity of cross-examining the witnesses; but such irregularity does not vitiate the trial.(a) Reports *L. P.* 1851, page 231.

574. But where a mohurir was charged with obtaining money from the treasury on the false plea that he had been authorized by the principal sudder ameen to draw his salary, it was held that the omission of the session judge to take the evidence of that officer vitiated the proceedings. The roobakaree of the principal sudder ameen stating that he did not give the prisoner permission to draw his salary could not be admitted as legal evidence. The prisoner had a right to have him examined in his presence, and to cross-examine him upon it. Reports *L. P.* 1852, part 1, page 112.

575. Where the evidence of a woman had been taken by the magistrate, after she had been put on her defence but discharged for want of proof, and it appeared by her own account that she was an accomplice in the murder, and she was absent at the time of the sessions having absconded in the interval, it was held that her evidence could not be taken into account by the sessions judge. Reports *W. P.* 1855, part 1, page 419.

Of a witness since dead.

576. In a case of murder, a principal witness having died before the trial came on before the sessions court, it was held that, if the judge considered the evidence of sufficient importance to warrant his so doing, it was incumbent on him to transfer the deposition of the deceased person, taken before the magistrate, duly authenticated, to the record, affording to it such consideration as it might appear to claim, when weighing the testimony adduced. *N. A. R.* vol. 4, page 335.

Dying declaration when admissible.

577. Where dying declarations are evidence, they shall be received, if it be proved that the deceased was at the time making the declaration, and then thought himself to be, in danger of approaching death, though he entertained at the time of making it hope of recovery. Act II. 1855, sect. 29.

It need not be on oath; or in the presence of the accused;

578 It is not necessary to the admission of a dying declaration that it should have been taken on oath; Reports *W. P.* 1856, part 1, page 80; or in the presence of the accused. Reports

(a) Such practice is not illegal: see note to para: 357.

L. P. 1856, part 2, page 6. It should bear on it a note of the precise hour of the day at which it is taken. Reports *L. P.* 1853, part 2, page 180. It must be brought on the record of the trial; and evidence taken to its accuracy; *N. A. R.* vol. 5, page 9; Reports *L. P.* 1852, part 1, page 1080; and without such proof it is inadmissible as evidence. *N. A. R.* vol. 6, page 150.

time of taking to be noted;

must be proved.

579. The dying declaration of a murdered person (taken down in writing by a *sezawul*) was considered alone insufficient for conviction. *N. A. R.* vol. 4, page 31.

580. A magistrate cannot try a case, transferred to the *foujdaree* from the salt department, on evidence taken before himself in his capacity of salt agent. Const. No. 817.

Evidence taken in another court.

581. So also the evidence recorded in a *moonsiff's* court was held to be inadmissible, as proof of a fact, in a trial before the sessions; and the mere recital, in the *roobakaree* of commitment in a case of perjury, that the prisoner made oath, was not considered sufficient evidence; the court would not presume that he was sworn, because he ought to have been. *N. A. R.* vol. 2, page 64.

The court will not assume,

582. But the admission of the fact by the prisoner may be taken to supply such omission in the evidence. *N. A. R.* vol. 3, page 22.

unless prisoner admits.

583. So, when a prisoner admitted that the corpse found was that of the murdered person, the court did not deem the absence of proof as to its identity sufficient to bar a capital sentence. *N. A. R.* vol. 2, page 104. Although in a case in which the prisoner confessed a murder, and pointed out human bones, which he alleged to be those of the person murdered, the court held that as the bones did not admit of identification, there was not a sufficient finding of the body to warrant a capital sentence. *N. A. R.* vol. 2, page 82.

584. Within the territories in the possession and under the government of the East India Company, all courts of justice, and all persons having by law or consent of parties authority to take evidence, shall take judicial notice of all Regulations and Ordinances made before or on the 22nd day of April 1834 by the governor general in council of the presidency of Fort William in Bengal, and having the force of law in any part of the said territories, and of all laws and Regulations heretofore made by the governor general of India in council, and of this Act, and of all Acts and Regulations heretofore made, or hereafter to be made by the governor general of India in council, constituted for the purpose of making laws and Regulations, whether the same be of a public or of a private nature. Act II. 1855, sect. 2.

**Documentary
notice of per-
sons.**

Judicial notice to be taken of all Acts and Regulations.

585. All courts and persons aforesaid shall take judicial notice of all public Acts of Parliament and of all local and personal Acts declared by Parliament to be public and to be judicially noticed; and shall admit, as *prima facie* evidence of any private Act of Parliament, any copy thereof purporting to be printed by the King's printer. Act II. 1855, sect. 3.

Judicial notice to be taken of public Acts of Parliament.

What shall be *prima facie* proof of a private Act.

586. Every court shall take judicial notice of its own members and officers respectively, and of their deputies and subordinate officers or assistants, and also of all officers

Judicial notice to be taken by court of its own officers, &c.

acting in execution of its process, and of all advocates, attornies, proctors, vakeels, pleaders, and other persons authorized by law to act before it. Act II. 1855, sect. 4.

Judicial notice to be taken of the names, titles, &c., of certain persons.

587. All courts and persons aforesaid shall take judicial notice of the names, titles, and authorities of the persons filling for the time being any one of the following offices in any part of the said territories:—Governor General, Governor, Lieutenant Governor or Deputy Governor, Secretary or Under-Secretary to government, Commander-in-Chief, Bishop, Member of Council, Legislative Councillor, Judge of any of Her Majesty's courts or of any sudder court, or of any court of judicature hereafter to be constituted in the said territories, to or in which the powers of any of Her Majesty's supreme courts may be transferred or vested. Act II. 1855, sect. 5.

Judicial notice to be taken of divisions of time, place, &c.

588. All such courts and persons aforesaid shall take judicial notice of all divisions of time, of the geographical divisions of the world, of the territories under the dominion of the British Crown, of the commencement, continuation, and termination of hostilities between the British Crown and any other state, and also of the existence, title, and national flag of every sovereign or state recognized by the British Crown. In all the above cases, such court or person may resort for its aid to appropriate books or documents of reference. Act II. 1855, sect. 6.

Proof of government gazette.

589. Any government gazette of any country, colony, or dependency under the dominion of the British Crown, may be proved by the bare production thereof before any of the courts or persons aforesaid. Act II. 1855, sect. 7.

of proclamations, acts of state, &c.

Proclamations, &c. when to be *primâ facie* proof of fact.

590. All proclamations, acts of state, whether legislative or executive, nominations, appointments, and other official communications of the government, appearing in any such gazette, may be proved by the production of such gazette, and shall be *primâ facie* proof of any fact of a public nature which they were intended to notify. Act II. 1855, sect. 8.

Proof of official documents.

591. Whenever by any Statute, Act, Regulation, or Ordinance now in force, or any Statute or Act to be hereafter in force, any certificate, certified copy, or other document, shall be receivable in evidence of any particular in any court of justice, the same, if it is substantially in the form and purports to be executed in the manner directed by the Statute, Act, Regulation, or Ordinance, which makes it evidence, shall be *primâ facie* evidence, where it is rendered admissible, without proof of any seal, stamp, signature, character, or authority, which it is directed to have, or from which it is directed to proceed. Act II. 1855, sect. 56.

Recital in Act of a fact of a public nature to be *primâ facie* proof.

592. Any recital contained in any Act of the governor general of India in council, constituted for the purpose of making laws and Regulations hereafter to be passed of any fact of a public nature, shall be deemed, before all such courts and persons, to be *primâ facie* evidence of the truth of the fact recited. Act II. 1855, sect. 9.

Gazette, &c..

to be published by authority, to be

593. The gazette or newspaper containing any advertisement purporting to be published by virtue of any public Statute, Act, Regulation or Ordinance, or of any rule, or order of a court of justice or of any board or officer of revenue, may be received by any such courts or persons as aforesaid as *primâ facie* evidence that such advertisement

was published duly under the authority from which it purports to proceed. Act II. 1855, sect. 10.

594. All courts and persons aforesaid may, on matters of public history, literature, science, or art, refer, for the purposes of evidence, to such published books, maps, or charts as such courts or persons shall consider to be of authority on the subject to which they relate. Act II. 1855, sect. 11.

in matters of public history, &c.

595. Books printed or published under the authority of the government of a foreign country and purporting to contain the statutes, code, or other written law of such country, and also printed and published books of reports of decisions of the courts of such country, and books proved to be commonly admitted in such courts as evidence of the law of such country, shall be admissible before any such courts or persons as aforesaid as evidence of the law of such foreign country. Act II. 1855, sect. 12.

What books, &c., shall be evidence of

596. All maps made under the authority of government, or of any public municipal body, and not made for the purpose of any litigated question, shall *prima facie* be deemed to be correct, and shall be admitted in evidence without further proof. Act II. 1855, sect. 13.

Government or public maps, when to be *prima facie* proof.

597. A witness, whether a party or not, shall not be bound to produce any document relating to affairs of state, the production of which would be contrary to good policy, nor any document held by him for any other person who would not be bound to produce it if in his own possession. Act II. 1855, sect. 21.

Witness, &c. not to state affairs.

598. A witness, being a party to the suit, shall not be bound to produce any document in his possession or power, which is not relevant or material to the case of the party requiring its production, nor any confidential writing or correspondence which may have passed between him and any legal professional adviser. If any party however offer himself as a witness, he shall be bound to produce any such writing or correspondence in his custody, possession, or power, if relevant or material to the case of the party requiring its production. Act II. 1855, sect. 22.

Party to suit not bound to produce certain documents;

unless he offers himself as a witness.

599. Every witness summoned to produce a document shall, if the same be in his custody, possession, or power, be bound to bring it, or cause it to be brought into court, although there be a valid objection to the right of the party calling for it to compel its production, or to the reading or putting it in as evidence, or to the disclosure of the contents thereof. The validity of any such objection, made by the person producing the document, shall be determined by the court: and for the better determination thereof, it shall be lawful for the court to receive any admissible evidence which the person producing the document may give respecting it; and it shall also be lawful for the court, except in the case of any document relating to affairs of state, to inspect the document; and, if necessary, to call to its assistance any person whom it may appoint to interpret the same. Such person, however, shall be previously sworn truly to interpret the same to the court alone, and not to disclose the contents thereof except to the court, unless the court shall order the document to be given in evidence. Act II. 1855, sect. 23.

Witness summoned to produce a document must bring it into court.

Mode of determining objection to production.

state.

Professional
communications.

600. A barrister, attorney, or vakeel shall not, without the consent of his client, disclose any communication made by the client to him in the course of his professional employment, nor any advice given by him professionally to his client, nor the contents of any document of his client, the knowledge of which he shall have acquired in the course of his professional employment. The privilege, however, is that of the client; and if any party to a suit shall give evidence therein at his own instance, he shall be deemed thereby to have waived his privilege, and to have consented to the disclosure by such barrister, attorney, or vakeel, of any matter as aforesaid, which may be relevant, and which the barrister, attorney, or vakeel would have been bound to disclose, but for the privilege of his client; and the barrister, attorney, or vakeel shall be bound upon examination to disclose any such matter. Act II. 1855, sect. 24.

Persons present
in court to give
evidence, &c.,
though not sum-
moned.

601. Any person present in court, whether a party or not, may be called upon and compelled by the court to give evidence, and produce any document then and there in his actual possession, or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce such document; and may be punished in like manner for any refusal to obey the order of the court. Act II. 1855, sect. 25.

Person summon-
ed to produce a
document not

602. Any person, whether a party to the suit or not, may be summoned to produce a document without being summoned to give evidence, and any person summoned merely to produce a document, shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same. Act II. 1855, sect. 26.

Copy of a docu-
ment made by a
copying machine to
be deemed correct.

603. An impression of a document made by a copying machine shall be taken without further proof to be a correct copy. Act II. 1855, sect. 35.

Admission of
secondary evidence
where original
document is out of
the reach of pro-
cess.

604. When an original document is out of the reach of the process of the court, it shall be lawful for the court, on application to it in any civil suit or proceeding, and on notice to the opposite party at a reasonable time before the hearing, to make an order for the reception of secondary evidence of its execution and contents. Act II. 1855, sect. 36.

When attested
document may be
proved as if un-
attested.

605. An attested document may be proved as if unattested, unless it be a document to the validity of which attestation is requisite. Act II. 1855, sect. 37.

Admission *prima*
facie proof of an
attested document.

606. The admission of a party to an attested instrument of its execution by himself shall be as against him sufficient *prima facie* proof of such execution of it, though it be an instrument which is required by law to be attested. Act II. 1855, sect. 38.

Entry made
erest or
of busi-
is-
of
person making it.

607. Any entry or statement, which would be admissible in evidence after the death of the person who made it, on the ground of its having been made against the interest of the person making it, or on the ground of its having been made in the ordinary course of business, shall be admissible, though the person who made it be not dead, if he is incapable of giving evidence by reason of his subsequent loss of understanding, or is at the time of the trial or hearing *bonâ fide* and permanently beyond the reach of the process of the court, or cannot after diligent search be found. Act II. 1855, sect. 39.

608. Any entry in any books proved to have been regularly kept in the course of business, or in any public office,—so far as such entry merely refers to and tends to identify by name, description, number, or otherwise, any bank notes or other securities for the payment of money, or other property, and the payer-in or receiver of them,—shall, in any case where such identification is necessary to be proved, be admissible in evidence for that limited purpose, if it shall appear to have been made at or about the time of the transaction to which it relates, though the person who made it, or he on whose information it was made, is alive and capable of being produced as a witness. Act II. 1855, sect. 40.

Entry in course
business when
admissible for pur-
pose of identifica-

609. Any receipt in writing, acknowledging the receipt of any money, valuable securities, or goods, shall, on proof of the execution thereof, be admissible in evidence before such court or person aforesaid, not only against the party giving it, but also against any person in whose favor such receipt would operate as a discharge, or to whom it would render the person giving it liable for the money, security, or goods acknowledged to have been received. Act II. 1855, sect. 41.

Receipt when
evidence
person of
the giver.

610. Whenever a receipt would be admissible under the preceding section if given by a principal, a receipt given by an agent or servant of such principal shall in like manner be evidence upon proof of the authority to give such receipt. Act II. 1855, sect. 42.

Receipt of agent.

611. Books proved to have been regularly kept in the course of business or in any public office shall be admissible as corroborative, but not as independent, proof of the facts stated therein. Act II. 1855, sect. 43.

Books kept in
course of business
or in a public office
admissible as cor-
roborative evidence.

612. The following documents may be admitted as corroborative evidence:—certificates of shares; and of registration thereof; bills of lading; invoices; account sales; receipts usually given on the payment, deposit, or delivery of money, goods, securities, or other things; provided they be proved to have been given in the ordinary course of business. Act II. 1855, sect. 44.

Documents ad-
missible as corrobo-
rative evidence.

613. In cases of pedigree, the declarations of illegitimate members of the family, and also of persons who, though not related by blood or marriage to the family, were intimately acquainted with its members and state, shall be admissible in evidence after the death of the declarant, in the same manner and to the same extent as those of deceased members of the family. Act II. 1855, sect. 47.

Declarations of
illegitimate per-
sons, &c., admissi-
ble in questions of

614. On an enquiry whether a signature, writing, or seal, is genuine, any undisputed signature, writing, or seal of the party, whose signature, writing, or seal is under dispute, may be compared with the disputed one, though such signature, writing, or seal be on an instrument which is not evidence in the cause. Act II. 1855, sect. 48.

Comparison of
hand-writing, &c.

615. Any power of attorney, which has been executed at a place distant more than 100 miles from the place wherein the action, suit, or proceeding is depending, may be proved by the production of it, without further proof, where it purports, on the face of it, to have been executed before, and authenticated by a notary public, or any court, judge, consul or magistrate. Act II. 1855, sect. 49.

Proof of power
of attorney.

Proof of dispatch
of letter by letter
book.

616. Whenever it is proved that a letter book is kept, and that, according to the usual course of business, letters are copied into such book and dispatched, and the letter book is produced, and it is proved that the letter was dispatched according to the usual practice, to the best of the knowledge and belief of the witness, having reasonable ground for forming that belief, the court may presume the dispatch of that letter according to the usual course of business. Act II. 1855, sect. 50.

What to be *prima*
facie proof of re-
ceipt of letter.

617. Any book proved to have been kept for marking the dispatch and receipt of letters, containing an entry of the dispatch of a letter, and an acknowledgment of the receipt of such letter, shall, on proof that such entry was made in the usual course of business, be *prima facie* evidence of the receipt of such letter. Act. II. 1855, sect. 51.

618. An anonymous letter received by a magistrate cannot be taken as evidence. Reports *W. P.* 1855, part 1, page 639.

Public writings;
copies must be on
stamp paper.

619. Copies of judicial or revenue papers are not to be received as evidence in any court of justice, or in any public office whatever, unless made on stamp paper, and authenticated by the seal and signature of the court, collector, or other public officer having charge thereof.—(*For rules for procuring copies of records, see chapter 6 of book 1.*) Reg. XXVI. 1814, sect. 16, cl. 4.

Private writings;
copies ditto.

620. When a deed has been once filed in court, it becomes a record, and a copy may be taken upon the stamp prescribed for copies of records. Const. No. 428.

What are inad-
missible unless
stamped.

621. No deed, instrument, or writing, executed in any place whatsoever on the continent of India, and relating to the payment or receipt of any sum of money, or to the sale, conveyance, assignment, or transfer of any property real or personal, being within any province or place to which this regulation extends, or of any interest in such property, or relating to any agreement, contract, obligation, engagement, or settlement intended to have effect within any province or place as aforesaid, (such deed, instrument, or writing being of a description chargeable with stamp duty) shall be pleaded, given, or admitted in evidence, or otherwise received or filed in any court of judicature or other public office, within the provinces subject to the Presidency of Fort William, unless the paper, vellum, or other material, on which such deed, instrument, or writing may be written, shall be stamped with the stamp prescribed for such in schedule A of this regulation, or bear a stamp of an amount exceeding that so prescribed, or be stamped as prescribed at the date of its execution. Reg. X. 1829, sect. 3.

Account books.

622. No regulation requiring that account books shall be written on stamp paper, they are admissible as evidence, though written on plain paper. (a) Const. No. 592.

**Mahome-
dan law.**

AMENDMENT OF.
Course of pro-
cedure, if the evi-
dence of a

623. The religious persuasions of witnesses are not to be considered as a bar to the conviction and condemnation of a prisoner; but in cases, in which the evidence given on trial would be deemed incompetent by the Mahomedan law, solely on the ground of the persons giving such evidence not professing the Mahomedan religion, the law officer of the sessions court is

(a) It follows, therefore, that all documents, not coming within the provisions of the above regulations, are admissible on unstamped paper.

to declare what would have been his futwa, supposing such witnesses had been Mahomedans. In such cases the court is not to pass sentence, but is to transmit the record of the trial with such futwa to the nizamat adawlut, which court, provided they approve of the proceedings held on the trial, is to pass such sentence as they would have passed, had the witnesses been of the Mahomedan persuasion. *Beng. Reg. IX. 1793, sect. 56. Ced. Prov. Reg. VII. 1803, sect. 25.*

witness is declared inadmissible by the law officer on the ground of his not being a Mahomedan.

624. If the evidence of a witness on a criminal trial, before the sessions, is declared by the law officer inadmissible, on the ground of the witness being a police officer, or an officer of government of any description; or on any other ground of exception in the Mahomedan rules of evidence, which appears to the judge unreasonable and insufficient; the examination of the witness is to be taken, and the law officer is to declare in his futwa the sentence to which the prisoner would have been liable, if the evidence of the witness had been admissible under the provisions of the Mahomedan law. In such cases however, if the conviction of the prisoner depends exclusively or principally upon the evidence of such witness, the judge is not to pass sentence, but is to refer the trial to the nizamat adawlut; which court, after taking a futwa from its law officers, is empowered to pass such sentence as is deemed just and proper, under the preceding section of this regulation, and the general regulations in force. *Reg. XVII. 1817, sect. 5.*

Or on any other account.

625. Thus, the conviction of a prisoner resting principally on the evidence of two females, whose testimony the law officer holds insufficient for conviction, the judge, differing, must refer the trial. *Const. No. 1045.*

Example.

626. No punishment whatever is to be inflicted upon suspicion only (termed by the Mahomedan lawyers *wuhm*, *shuk*, or *shoobah zaefah*), when the evidence against the prisoner is undeserving of credit; or the presumption of his guilt, arising from credible testimony, or circumstantial evidence, is weak; and does not amount to the degree of strong and violent presumption, held sufficient for conviction, and recognized as such in the Mahomedan law under the denominations of *ghalib-oo-zun*, *akbur-oo-raee*, and *shoobah-u-cuvvee*, or *shoodeed*. When the judge does not consider a prisoner convicted on such presumptive proof, or on the evidence of credible witnesses, or on his own confession, he is not to sentence the prisoner to any punishment, whatever may be the futwa. *Reg. LIII. 1803, sect. 2, cl. 6.*

627. The evidence required by the Mahomedan law varies in relation to different offences, and depends upon the principle of justice within the provisions of which it falls. We have already briefly adverted (paragraph 43) to the rules of evidence under the heads of *tazeer* and *seasut*, but a general view of the subject appears desirable in this place, notwithstanding that the foregoing provisions supply the remedy in cases, where the defects of this law are found to obstruct the free administration of justice. What follows is taken from the 21st book of the Hedaya, entitled *Shahadat*, or evidence, in volume 2 of Hamilton's translation.

RULES OF EVIDENCE.

628. In all cases of crimes punishable by *kisas* it is incumbent upon every person to give his testimony, on being required to do so by the party concerned; but a witness is at

How far it is incumbent to evidence.

liberty to give or withhold any evidence, which may lead to the conviction of a Mussulman of any offence liable to *hudd*, or a less severe punishment. This is held, because the prophet said to a person who had borne testimony, " verily it would have been better for you if you had concealed it;" and again, " whoever conceals the vices of his brother Mussulman shall have a veil drawn over his own crimes in the two worlds by God." But this does not mean that it is commendable in a witness to commit perjury; he must tell the truth, but not the whole truth; a denial of a positive fact would be wrong, but equivocation is praiseworthy.

Number of witnesses required to constitute full legal proof.

Evidence of women.

629. In order to constitute full legal proof, the Mahomedan law requires the evidence—in a case of *zina*, of four men;—in a case punishable by *kisas* or *hudd*, of two men;—and in all other cases, of two men, or of one man and two women.(a) These numbers are the least required; but it is expressly stated that the strength of a case does not lie in the number of witnesses adduced to bear testimony. The evidence of women is inadmissible in all cases inducing *hudd* or *kisas*, the operation of which is barred by a doubt of the truth of the charge, because the testimony of women involves in itself a degree of doubt; and it is considered merely as a substitute for evidence, being taken only when that of men cannot be had. There is an exception to this rule founded on a traditional saying of the prophet, " the evidence of women is valid with respect to such things as it is not fitting for man to behold."

Character of witnesses.

630. It is an essential point in the consideration of evidence that the good character of the witnesses should be undoubted. In most cases, however, the magistrate may rest contented with the apparent probity of a Mussulman, " because the probable character of all that profess the religion of Islam is an abstinence from every thing prohibited by that religion;" but, in cases inducing retaliation or fixed punishment, mere probability is not sufficient, and therefore a purgation of the witnesses must be made by a strict investigation into their character. Such purgation is also necessary, if the defendant impugns the probity of the witnesses for the prosecution; and it may be made openly or in secret by the magistrate.

What evidence is inadmissible;

and what witnesses incompetent.

631. Evidence on hearsay is inadmissible except in proof of such matters as admit the privacy of only a few persons: so also evidence which depends on recognition of the voice is imperfect and is not allowed, for which reason a blind man is not a competent witness: and a man must not swear to his own signature, unless he remembers the act of signing.(b) Slaves, convicted slanderers, atrocious criminals, free-thinkers, heretics, and infidels, and generally persons guilty of shameless acts, or of such as are prohibited by law, are not admitted to be sufficient witnesses for want of credit.(c) Testimony is also

(a) So, where there are only three witnesses, one male and two females, and their evidence is contradictory, full legal proof is wanting. N. A. R. vol. 1, page 193. In another case, the evidence of a female, and a minor was held insufficient. N. A. R. vol. 4, page 261.

(b) Comparison of hand-writing is not admitted as legal evidence. N. A. R. vol. 1, page 113, and note. See also Hed. Trans. vol. 2, page 680.

(c) The evidence of accomplices is insufficient to prove any criminal charge, though admitted, when corroborated by other evidence, to establish violent presumption. N. A. R. vol. 1, page 304.

inadmissible in favor of a father or son, or of a grandfather or grandson, or of a husband or wife, or of a master or slave, in consideration of their relative interests ;(a) so also the testimony of interested persons(b) and of one partner in favor of another in a matter relative to their joint property cannot be received ; but this rule does not apply to evidence in favor of a brother or an uncle, because such relations have no power over one another. If the accused person be a Mussulman, it is requisite that the witnesses against him be also of the same religion ; (c) the testimony of *zimmes*, or infidel subjects, with respect to each other, is admissible, although they be of different religions ; the evidence of a Mussulman also is valid against a *zimme* ; and the testimony of both may be taken against an infidel *moostamin*, or protected stranger. But the evidence of the latter is invalid against any person except one of his own countrymen, also a protected alien.

632. All evidence, with respect to such punishments as are purely a right of God, is vitiated and rendered void by such great delay in the production of it, as amounts to *takadim*, where the witnesses were not prevented from coming forward. The argument is that if the witness withheld his evidence for the sake of concealing the infirmity of another, it follows that any subsequent evidence could only arise from motives of malice, or of private interest, in which case his testimony is invalid ; and if, on the other hand, the witness delays so long to perform the duty of giving evidence, which in all other cases is incumbent upon him, his evidence must then be held unworthy of attention. Hence, in either case, the witnesses are liable to suspicion on account of their falsity or unworthiness. The limitation of *takadim* is disputed, but it is generally held to be one month.(d)

Evidence is ren-

633. The validity of the evidence at the time of passing the decree constitutes the proof ; and therefore, if a witness loses his competency after having given evidence, and before the passing of the decree, by reason of blindness, or dumbness, or insanity, or from becoming infamous, the decree cannot issue ; but in such cases death or absence does not destroy competency.

The evidence must be valid at the time of passing the decree.

634. It seems that when the evidence of two witnesses do not entirely agree, only so much is to be believed as is confirmed by both ; but the entire evidence must be rejected, if they differ on points in regard to which it is improbable that the memory should fail ; or on points not superficially apparent, any knowledge of which therefore bespeaks a more minute attention.

In case of contradictory evidence

635. A witness may give evidence by proxy, by substituting another person to detail certain facts or opinions for him, in case of his inability to give evidence in person. But this is admissible only in cases of necessity, arising from the death of the principal witness, or from his having departed to a distance of three days' journey, or from severe sickness ; and is never admitted in cases in which the occurrence of a doubt bars judgment.

Evidence given by proxy.

636. Rules also are given whereby a witness may retract his evidence before the decree is passed, and in such case the evidence becomes void.

Retraction of evidence.

(a) N. A. R. vol. 1, page 7.

(b) In cases of extortion the law officers have held that those, who contributed to the extortioner's demands, could not be admitted as witnesses, as they were, in point of fact, plaintiffs in the case : but the court over-ruled this doctrine. N. A. R. vol. 2, page 341, and vol. 4, page 286.

(c) N. A. R. vol. 1, page 81.

(d) Hed. Trans. vol. 2, page 85.

Futwa delivered
officers of
adawlut
imperfect evi-
dence.

637. To this summary of the rules of evidence, which is necessarily imperfect, may be added the translation of a futwa given by the law officers of the nizamat adawlut in 1799, in answer to a question regarding punishment in cases of *shoobah*, which I find quoted in Harington's Analysis, vol. 1, page 292. "There are three degrees of imperfect evidence. The first produces *shuk*, or uncertainty whether the charge be true or false. The second establishes *zun*, or presumption that the accusation is true. The third excites *wuhm*, or doubt against the truth and probability of the fact alleged. The degree of *zun* is admitted to be a ground of legal conviction and sentence, provided the mind receives a strong impression and assurance from it; in which case it is denominated *akbur-i-raee*, and *zun-i-ghalib*. This degree of violent presumption amounts nearly to certainty, and is fully described as such in the *Ashbaho Nuzayir*. The sum of the above is, that a penal sentence may be founded upon imperfect evidence, when, in the judgment of the magistrate, it affords strong ground of presumption that the crime charged has been committed by the party accused. In the *Buhr-i-rayik* it is related, from the jurist Aboo Bukr Aamash, that when a person accused of theft denies the charge, the magistrate may act to the best of his judgment upon the case. If he be impressed with a strong conviction that the prisoner has committed the theft, and has the stolen property in his possession, he may inflict discretionary punishment. In the *Moheet* it is declared that the shedding of blood upon violent presumption is authorized. And a similar declaration is contained in the *Buhr-i-rayik*, that it is held lawful to take away life upon strong presumptive proof. Thus, if a man enter the house of another with a drawn sword, and the owner of the house entertain a firm belief that the other is come to kill him, he may put the stranger to death. Strong presumption is sometimes produced by the circumstances of the case, without the testimony of witnesses. It is accordingly noticed by the author of the *Buhr-i-rayik*, that in like manner as a charge is proved by witnesses, or by the confession of the accused, so it is also established by convincing circumstances. Thus if a man come out of a house with a bloody knife in his hand; and he appear terrified, and run away; and the people immediately entering the house find a person whose throat has been recently cut; the blood dropping from it; and there be no other man in the house; these circumstances warrant a strong presumption that the man described is the murderer. A mere possibility of the person in question having cut his own throat, or that another may have cut his throat and escaped over the wall, is too remote from probability to be relied upon. Strong presumption is likewise, at times, found in the testimony of witnesses, not amounting to legal proof; in which case *tazeer* may be inflicted, though *hudd* and *kisas* are prevented. Thus Kaze Khan says, "an imputed murderer, robber, or assailant, may be imprisoned, till he show contrition." Upon which the author of the *Buhr-i-rayik* observes, that the imputation (*ittihám*) should rest upon the evidence, either of two witnesses of unascertained credit, or of one credible witness. Upon such evidence therefore, though legally defective, if it produce a violent presumption that the accused is guilty of the crime alleged against him, *tazeer* by imprisonment may be adjudged. But, on the contrary, if only a single witness of uncertain credit, or a known reprobate, have given testimony, the magistrate is not authorized to imprison the accused upon evidence of so doubtful a nature.

SECTION IX.

OF CONFESSIONS.

638. When a prisoner confesses before a magistrate the crime or misdemeanor with which he has been accused, or confirms any former confession, the magistrate is to be careful to have such confession, or confirmation of a former confession, witnessed by as many of his officers, or other creditable persons, present at the time it is made, as the Mahomedan law requires to give it validity, and to cause such witnesses to be in attendance at the sessions. *Beng. Reg. IX. 1793, sect. 6. Ced. Prov. Reg. VI. 1803, sect. 6.*

How to be taken.
BY MAGISTRATE.

es required ;

639. Confessions are to be attested generally by four, or at least by three, creditable and respectable witnesses, who can read and write. C. O. No. 23 of vol. 1.

not less than three.

640. The pleaders of a civil court may be called upon to attest confessions before the magistrate, and are liable to dismissal for refusing to do so. Const. No. 101.

Pleaders may be required to attest confessions.

641. The magistrate, in examining the witnesses to a written confession, should be careful to ascertain, that they, as well as the party confessing, were fully informed of the contents of it. C. O. No. 89 of vol. 1, para. 5.

Proof of mofussil confession

642. The examination of witnesses to confessions should invariably be close, full, and complete, so as to satisfy the courts, that every precaution has been taken to ensure the confession being perfectly voluntary, every word having been given at the time by the prisoner, and accurately recorded. Reports *L. P.* 1852, part 1, page 81.

must be full and complete ;

643. The deposition of a witness to the confession of a prisoner cannot be received in evidence against him, unless it be taken in the presence of the prisoner. N. A. R. vol. 1, page 300.

and must be taken in the presence of the prisoner.

644. But the magistrates are strictly enjoined to satisfy themselves, that all confessions made by prisoners are free and voluntary ; and notwithstanding such confessions, they are invariably to summon, and to bind over to attend at the sessions, the witnesses to the commission of the offence alleged against the prisoner, in the same manner as if the prisoner had denied the charge. The magistrates are further required to take special care, that persons, upon being apprehended, are not made to suffer corporal punishment, or otherwise ill-treated, under the pretence of compelling them to answer truly to questions that may be put to them, or under any other pretext whatever. *Beng. Reg. IX. 1793, sect. 6. Ced. Prov. Reg. VI. 1803, sect. 6. C. O. No. 52 of vol. 4. W. P.*

All confessions to be free and voluntary.

Evidence to the commission of the offence required independent of con-

against ill-treatment.

645. The examination of all prisoners is to be made in the presence of the magistrate ; and he is in no case to certify, or otherwise to authenticate, any paper, purporting to be a confession, which has not been made on a personal examination by himself. And more effectually to provide against the objectionable course of allowing the examination of prisoners to be taken in the *serishta* in the magistrate's absence, magistrates are required, in all cases of confessions before them, to certify the same in the following words: "I hereby certify that this confession of — was made by the said —, and taken down in writing, and attested by the subscribing witnesses, before me, and in my presence, on the

Examination of all prisoners to be made in the presence of the magistrate.

Mode in which confessions are to be certified.

“between the hours of——; that, to the best of my belief, the confession was voluntary; “and that no interference, directly or indirectly, on the part of any person likely to influence “or intimidate the prisoner, was permitted.” The magistrate is to attest this with his signature at length and the specification of his office. C. O. No. 54 of vol. 2, para. 20; and No. 90 of vol. 1.

646. It is not sufficient that the magistrate should verify the confession of a prisoner, written down in his absence: and confessions so taken were rejected as unworthy of credit. N. A. R. vol. 2, page 70. So the court held that they could not receive, as legal evidence, confessions taken before a magistrate who did not give his undivided attention to them when recorded. N. A. R. vol. 6, page 174.

Must be taken
by committing of-
ficer.

647. Confessions cannot be taken by an assistant when the case is before the magistrate. This important duty must always be performed by the committing officer in person, or the confession cannot be received as legal evidence. N. A. R. vol. 6, page 185.

If prevented from
so doing, the rea-
son must be placed
on record.

648. Whenever a committing magistrate may be prevented, in any serious case, from receiving a confession in person, the circumstances which may have prevented him should be placed on record by an official note or memorandum to be filed with the proceedings of the case. C. O. No. 56 of vol. 4, *L. P.*

649. Few young officers are aware how often confessions are not spontaneous: and therefore the magistrates themselves, who are responsible for the exercise of due discretion when they entrust duties to their subordinates and assistants, are bound to exercise a peculiarly watchful care and supervision in this important matter. Whenever, in capital cases, confessions are taken by other than covenanted officers, the magistrates are to assign the special reasons which made such a measure necessary or advisable. Attention also should be paid to the record of confessions, in order to ensure the legibility and distinctness of such serious documents. A few minutes more spent in writing would sometimes prevent the waste of hours in reading them, and obviate doubts as well as trouble. C. O. No. 52 of vol. 4, *W. P.*

Precautions to
be observed in
taking confessions,
that the prisoners
may not on the one
hand be dissuaded
from confessing,
and on the other be
compelled to do so
by improper means.

650. When accused persons, who have confessed in the mofussil, are forwarded by the police, they should not be allowed to mix with the prisoners in the common jail previous to their examination by the magistrate, lest they should be put upon their guard by them, and consequently decline to make any confession or discovery. On the other hand such persons, if examined immediately, and while under a strong impression of any improper treatment which they may have experienced in the mofussil, may be induced, before they have had time to recollect themselves, to confirm fabricated and extorted confessions. In order to guard against this danger, the magistrate should be mild and patient in his examination; and should exert himself to ascertain whether the prisoners have been subjected to such improper treatment, and to make them sensible that they are secure against such practices while under his care; he should be particularly attentive that alleged mofussil confessions be not recorded as confessions made before himself, from being read to prisoners and receiving their assent; but should satisfy himself, by making prisoners tell their own story, that their statements are deliberate and spontaneous; and lastly, he should be watchful, that prisoners are

not subject in the jail, or other places of confinement, to any continuance of the improper treatment to which they are liable at the thanas. The police officers, under whose charge prisoners are sent in, should not be permitted to be present during their examination; and the magistrate should see that the rules, prescribed (in sect. 19, Reg. XX. 1817) for the guidance of police officers in receiving confessions are carefully enforced. The too easy admission of confessions will always operate as a temptation to impose false confessions on the courts; while if they are received with circumspection, and all the additional evidence, which the case may admit of, uniformly required and carefully taken, the fear of detection must prove a powerful discouragement to the practice.^(a) C. O. Nos. 73 and 78 of vol. 1.

651. On the arrival of every chalan or despatch of prisoners, the magistrate is carefully to examine the written chalan to see the date of the apprehension and the date of the despatch of each prisoner from the thana. If any prisoner has been detained in custody longer than the period allowed by law (48 hours) without reasonable explanation being given for such delay, he is to call on the police officer concerned to state why such delay has occurred; and he is to be careful to notice and punish every instance where satisfactory reasons are not given for this infringement of the provisions of cl. 16, sect. 19, Reg. XX. 1817. He is to be particular also in seeing that none of the prisoner's relatives or connexions, especially females, have been taken into custody and subsequently discharged by the police. He is also to enquire into, and punish police officers severely in all cases, in which it appears that any ill-treatment or severity, beyond what was necessary to secure their persons, has been used towards prisoners. On the arrival of a confessing prisoner at the place where the magistrate is, he is to be immediately removed from the custody of the police officers who have brought him in, and to be placed in the charge of the nazir, or in some secure place of confinement, not being the hajut-ward in the jail; and, after a sufficient time has been allowed him to collect and refresh himself, the prisoner is to be brought before the magistrate, and his confession is to be recorded under the precautions ordered by the nizamat adawlut. The mofussil confession is not to be placed in the hands of the native officer recording the confession before the magistrate; but is to be kept by the latter,^(b) until the prisoner's fresh statement shall have been recorded in his presence. If it again amounts to a confession, the two statements are to be compared; and the prisoner should be asked to explain any discrepancies in or differences between the two; but no cross-examination tending to intimidate the prisoner or to compel disclosures from him is to be allowed. C. O. Sup. Pol. *L. P.* No. 6 of 1853. C. O. No. 16, June 21, 1855, *L. P.*

Further rules.

^(a) C. O. No. 18 of vol. 3, contains an extract from a minute recorded by Sir Thomas Munro, when Governor of Madras, on the subject of extorted confessions.

^(b) "The very remarkable correspondence between the mofussil and foudaree confessions of certain prisoners, not only in the words used, but in the course of the narrative, and in every peculiarity of expression, having come to the notice of the court, they have reason to believe that this coincidence has arisen from the practice of permitting the native officer, who records a confession in the magistrate's presence to have access to the confession made before the police, instead of requiring him to write down the spontaneous statement, as it is made by the prisoner in his own words. The court observe that no great reliance can be placed upon confessions thus elicited, as whatever influence may have induced a prisoner to tell a particular story at the thana, it will not be weakened in its operations, when he has his memory refreshed by the very same questions being asked him in the magistrate's court." C. O. No. 16, June 21, 1855.

Mohurirs writing confessions in the foudaree are not to be allowed to refer to the mofussil confessions.

652. The mohurirs of the magisterial courts, who take down the examinations of confessing prisoners, should not be allowed to refer to the original confessions of the same parties recorded at the thana or to interrogate the prisoners therefrom. The latter should be allowed to make their own spontaneous statements, and the presiding officer should retain the statements made at the thana in his own possession, until such time as the prisoner's foudaree statement shall have been recorded, when he is at liberty to question the confessing party as to any discrepancies that may exist between the two. C. O. No. 708, June 2, 1855, *W. P.*

Police officers not to be allowed to be present during the examination.

653. Police officers bringing in witnesses or defendants should not be allowed to remain in attendance at the cutcherry, until the examinations of such persons have been taken, as their object is frequently to see that the witnesses tell the story put into their mouths in the mofussil. C. O. Sup. Pol. *L. P.* No. 10 of 1846.

Thana confession not to be read over to a prisoner before he confesses to magistrate.

654. It is irregular to read over to a prisoner, before taking his confession, that which he had made at the thana. There is no better test of the genuineness of a confession than its repetition, without much variation, after an interval, before another authority; but if the former confession be read over to the prisoner, the efficacy of the test is destroyed. Reports *W. P.* 1855, part, 1, page 209.

How far the may be the as to his confession.

655. In a case where the session judge objected to a confession being received as evidence against a prisoner, because it had been obtained by cross-examination as to a mofussil confession, which had not been proved,—the court held that the magistrate was quite regular in questioning the prisoner as to the fact of the mofussil confession, to give him an opportunity of denying it, or of explaining whether it had or had not been obtained by improper means. *N. A. R.* vol. 4, page 245.

Where the confession is not supported by corroborative proof, its truth should be tested by questioning the prisoner.

656. Where the confession is in itself circumstantial and clear, and is followed by the production of the property plundered, or by the pointing out of the body of the deceased or by strong corroborative proof of any kind, the truth of the confession, at all events in its main features, may *prima facie* be presumed. In all other cases a confession should be regarded with distrust and should not be received or acted on without further scrutiny: prisoners should be subjected to a searching examination and questioned fully as to all particulars, and if they fail to point out the body or produce the property they should be required to show the cause of their failure to do so. They will then doubtless break down if the confession be false or have been procured by improper means. Govt. Order, *W. P.*, No. 2387A, October 26, 1855.

Police officers who

657. It is most vicious and objectionable for the thanadar or other police officer to accompany prisoners, who have made thana confessions, to the foudaree court, and to request that such prisoners may be re-transmitted to the thana after their foudaree confessions have been recorded, though such request be made professedly, and perhaps really, for the purpose of the prisoner's aiding in the tracing of other offenders, or in the indication of stolen property. C. O. No. 1047, August 10, 1854, *W. P.*

658. The prisoners were acquitted, where it appeared that the confessions were not read over to the prisoners, and that such care was not taken as to render it certain that there was

no undue influence from the presence of any of the mofussil police during the taking of the confessions. N. A. R. vol. 6, page 260.

659. The original confessions of prisoners, taken down in their peculiar dialects, should be accompanied by translations on all occasions of reference to the nizamat adawlut(a). C. O. No. 281 of vol. 1.

ion in re.

General Rules.

Must be volun.

660. The confession must be free and voluntary; [v. ¶ 644.]—for if it is obtained by improper influence, by promises, intimidation, or threats, it cannot be received in evidence; [N. A. R. vol. 1, pages 104, 251; vol. 2, page 166; vol. 4, page 269; vol. 6, pages 236, 276, and 331.]—yet confessions so improperly obtained have occasionally been admitted, when corroborated by other evidence, [N. A. R. vol. 1, page 81.]—such circumstance being considered in mitigation of punishment; [N. A. R. vol. 3, pages 156, 337.]—and a confession made in hope of benefit, though nowise improperly obtained, was allowed in mitigation. [N. A. R. vol. 1, page 98.]—and when a woman confessed to the murder of her husband on a promise made by the darogah that he would release her, and there was no other direct evidence, the sentence was mitigated on that account to transportation for life. [Reports *W. P.* 1855, part 2, page 599.]—It is not an objection to the admissibility of a confession, that it was made by the prisoner after being desired by the police officers not to fear to tell the truth; [N. A. R. vol. 1, page 33.]—nor is it an objection, that the prosecutor promised not to prosecute, if the confession be corroborated; [N. A. R. vol. 2, page 96; vol. 3, page 69;]—nor is a confession invalidated by the fact of a former confession having been made to a person not a police officer, under promise of release; nor by the non-observance of the rule contained in cl. 3, sect. 19, Reg. XX. 1817, which requires that whenever a confession is taken at night, or at any other place than the police thana, the special reason for its being so taken shall be stated in the darogah's report; [N. A. R. vol. 2, page 291.]—nor by the non-observance of the rule that prisoners shall not be detained by the police more than 48 hours after apprehension. [Reports *L. P.* 1252, part 1, page 581]—So, it was held that confessions were admissible, when the police officers of one district traced some dacoits into another district, and recorded the confessions where they had no regular jurisdiction. [Reports *L. P.* 1851, page 665.]—Although a confession, improperly obtained, is not admissible, yet any facts, which have been brought to light in consequence of such confession, may be properly received in evidence; [N. A. R. vol. 3, page 156.]—and such facts, as explained by the confession, are sufficient for conviction. [Reports *W. P.* 1855, part 2, page 637.]

661. It is not regular to convict a prisoner solely on his own confession: but evidence must be taken, to the actual commission of the crime with which he is charged, [v. ¶ 644; N. A. R. vol. 1, page 255; and vol. 4, page 229.]—and the prisoner may be acquitted in spite of his confession, though voluntarily made. [N. A. R. vol. 2, page 21; vol. 3, pages 242, 263, 325; vol. 5, page 103.]—A *thana* confession should be borne out by other evidence; [N. A. R. vol. 2, page 172.]—and is alone insufficient for conviction; [N. A. R. vol. 3, pages 23, 274.]—and even though acknowledged and confirmed by prisoner, it requires

Natural value

(a) But this refers now only to cases of peculiar dialects; C. O. No. 94 of vol. 3 *L. P.* dispenses with translations of all proceedings in criminal trials referred, with the exception of those cases, tried with the assistance of the law officer, in which the session judge recommends a capital sentence.

corroboration by other evidence: [N. A. R. vol. 3, page 97.]—but if proved to have been freely and voluntarily made, and supported by other evidence, it is sufficient. [N. A. R. vol. 3, page 345.]—A parole confession made before private individuals is not admissible; [N. A. R. vol. 2, page 45.]—however numerous the witnesses to it may be. [N. A. R. vol. 2, page 84.] The confession of a minor is admissible, if he is *doli capax*. [N. A. R. vol. 2, page 2.]

Effect of, as re-
gards the person
confessing.

*662. If a confession be admitted, the whole of it must be taken together, in order to show distinctly the full meaning and sense of the prisoner; and due weight must be allowed to all the circumstances which he alleges in his own favour: [N. A. R. vol. 1, pages 39, 110, 130, 156, 240; vol. 2, pages 32, 48, 67, 98, 147, 256, 408, 456; vol. 3, pages 25, 154, 207, 236, 244, 300.]—and the prisoner need not call evidence to prove the assertions he makes in exculpation; [N. A. R. vol. 1, page 192.]—but such exculpatory pleas will be rejected, if they are disproved by credible evidence; [N. A. R. vol. 1, pages 144, 161; vol. 2, page 183.]—or if afterwards retracted by the prisoner: [N. A. R. vol. 2, page 472.]—and the court will always put its own construction on the degree of the prisoner's guilt, as shown in his own narrative,—whether against him, [N. A. R. vol. 1, page 60; vol. 2, page 79; vol. 3, pages 43, 238; vol. 4, pages 54, 127; vol. 5, page 61.]—or in his favor. [N. A. R. vol. 2, page 84.] If the prisoner subsequently retracts his confession, and it is not corroborated by other evidence, it may yet be used against him, if proved to have been given voluntarily; [N. A. R. vol. 1, page 381; vol. 2, pages 39 and 79;]—but not when there is no proof that the fact charged has been committed. [N. A. R. vol. 1, page 143.]—Evidence, consisting of two confessions made at the thana, one of which contained an exculpatory plea, while the other was wholly criminatory, was considered insufficient for conviction. [N. A. R. vol. 3, page 201.]

As regards others.

663. Magistrates ought not to commit for trial, or hold to security, any person solely on the ground of the accusation of confessing prisoners, that such persons were their accomplices or concerned in the offence charged; but this is not meant to restrict them from making such further inquiry as they consider necessary, or from acting according to the result. C. O. No. 156 of vol. 1. A confession is not evidence against any but the prisoner who made it. It cannot be assumed that, if trustworthy as against the party making it, it is also so as against third parties who may be implicated by it. Reports *L. P.* 1856, part 1, page 627. Reports *W. P.* 1854, part 1, page 181. But it seems that it may be admitted in aid of other proofs of another prisoner's complicity in forming strong presumption; Reports *W. P.* 1855, part 2, pages, 110, 266; or as corroborative of other independent evidence, but not directly for conviction. Reports *L. P.* 1855, part 2, page 23.

Mahomedan

Law.

volun-
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nd.

664. In all criminal accusations before a Mahomedan court of judicature, the greatest weight is given to the confession of the party accused, whether made before the court or elsewhere, provided it be voluntary; and provided the person confessing be of sane mind and mature age; because the declaration of an infant or an idiot is unworthy of any credit, and he is in law incapable of any act which may cause injury to himself. It is also a general rule, that the whole of what is stated in explanation must be taken as part of the confession; but it seems doubtful how far the prisoner is bound to prove his exculpatory pleas. In the *Zeeadat* of Imam Mahomed it is stated to be a general principle that “whoever confesses an

Exculpatory pleas.

act which subjects him to a legal penalty, and subsequently offers a plea to exonerate himself from the penalty, must establish such plea by proof: but if he deny that which occasions the penalty, his denial is admitted." This passage is open to ambiguous construction; and, from the case to which it is applied, might be understood to require proof of a plea of justification in all cases of acknowledged homicide. The author of the *Humadeeyah*, who cites the *Zeeadat*, however, deduces from the above quotation a certain inference, that the statement of an act under "circumstances, which prevent its being penal, is a virtual denial of the cause of penalty;" and this conclusion is undoubtedly just and rational, when there is no evidence against the acknowledger of the act, besides his own statement of the case. (a) According to the law officers of the nizamat, there are two opinions; one, that the fact pleaded in justification is inadmissible without proof; this is *kiyas*, or the apparent construction of the law; the other, founded on *istahsan*, or the more profound or approved construction, is that no proof is required; the latter opinion is preferred. (b)—In a case of *zina* the confession is insufficient for punishment, until it has been repeated four times, the kazee being directed to refuse it on the three first occasions, and even then to suggest to the person confessing the mention of circumstances in mitigation or exculpation. In other cases a single confession is generally considered sufficient; though Aboo Yoosuf contends for the necessity of two confessions in cases of theft, in consideration of the number of witnesses required to make the evidence valid, advancing this as the reason why four confessions are required in *zina*. (c)—Retraction of confession is permitted in all cases, the punishment of which is purely a divine or in other words a public right; but in cases of slander and other offences, in punishing which the right of the individual is either wholly or partially concerned, a confession once made is irrevocable. The nature of the offence is considered in the same manner when the confession is made during intoxication; for, where the right of God only is affected, such confession is not sufficient for judgment. And a confession is invalid if any compulsion is used to extort it. When a confession as well as evidence is produced in proof of *zina*, the former must be complete in itself; for, if incomplete, it invalidates instead of strengthening the evidence. In confessions, as well as in evidence, much depends upon the expressions used; as for instance, it is no proof of theft if person confess that he took certain property without expressly declaring that he stole it. There is no difference between *zimmes*, slaves, and free Mussulmans with respect to confessions. (d)

Completeness of

Retraction.

Made during intoxication.

Joined to evidence.

Effect of expressions in.

Description of persons.

English

Must voluntary.

665. (e) Confession, to be admissible, must be free and voluntary. And in the case of a confession before a magistrate or other person, if it appear that the defendant was induced to make it by any promise of favor, or by menaces, or undue terror, it shall not be received in evidence against him. Thus, if it be said to the defendant that it will be better or worse for him if he do or do not confess; or that what he says will be taken down and used for him or against him on his trial, or even if a confession be procured by a threat to take the

(a) Harington's Analysis, vol. 1, page 260.

(b) This opinion is stated by Harington to be in the futwa given in N. A. R. vol. 1, page 151,—though this part of it is not mentioned in the printed report. See also N. A. R. vol. 1, page 192.

(c) Hed. Trans. vol. 2, page 86.

(d) Harington's Analysis, vol. 1, and Hed. Trans.

(e) The English law here given is taken from "Archbold's Pleading and Evidence in criminal cases."

defendant before a magistrate, if he do not give a more satisfactory account, or to send for a constable; or by saying "tell me where the things are, and I will be favorable to you;" or "you had better tell all you know;" or "you had better tell where you got the property;" or "you had better split, and not suffer for all of them;" or "it would have been better if you, had told at first;" or "I should be obliged to you if you would tell us all you know about it; if you will not, of course we can do nothing;" or "any thing you can say in your defence we shall be ready to hear;"—the confession will not be admissible. Where the prosecutor asked the defendant for the money that he had taken, and before it was produced said, "I only want my money, and if you will give me that, you may go to the devil if you please," upon which the defendant took part of the money from his pocket and said, that was all he had left; the evidence was held inadmissible. And a confession with a view, and under a hope of being thereby permitted to turn king's evidence, has been holden inadmissible. To exclude a confession made under the influence of a promise or threat, the promise or threat must be of a description which may be presumed to have such an effect upon the mind of the defendant, as to induce him to confess: and therefore an exhortation, admonition, promise, or threat, proceeding at a prior time from some one who has no concern in the apprehension, prosecution, or examination of the prisoner, but interferes without any authority, will not be sufficient to render a confession inadmissible. The inducement must also refer to a temporal benefit; for hopes, which are referrible to a future state merely, are not within the principle which includes confessions obtained by improper influence. But it is no objection to the admissibility of a confession, that it was elicited by questions, if no undue influence be used:—or that it was made under a mistaken supposition that some of the defendant's accomplices were in custody, even though it were created by artifice with a view to obtain the confession. And a letter given by a defendant to the jailor to put into the post is evidence against him. If the promise or menace, &c. take place previously to the prisoner's being brought before the magistrate, the court will, in general, refuse to admit the confession to be given in evidence, unless it appears that the prisoner was undeceived by the magistrate, and cautioned by him not to expect the favor, or not to regard the menaces held out to him. But, where a defendant, having been told by a constable that he might do himself some good by confessing, afterwards asked the magistrate if it would benefit him to confess, and, the magistrate saying he could not say it would, the defendant then declined to confess, but afterwards, when going to prison, made a confession to the constable; the confession was admitted, because the answer of the magistrate was sufficient to remove any expectation which the constable might have caused. If a confession be obtained by undue means, any statement made under the influence of that impression cannot be received. The only questions in these cases are—was any promise of favor, or any menace or undue terror, made use of, to induce the prisoner to confess?—and if so, was the prisoner induced by such promise or menace, &c., to take the confession? If the judge be of opinion in the affirmative, upon both these questions, he will reject the evidence. If, on the contrary, it appear to him, from circumstances, that, although such promises or menaces were holden out, they did not operate upon the mind of the prisoner, but that his confession was voluntary notwithstanding, and he was not biased by such impressions in making it, the judge will admit the evidence.

666. Although a confession, for the above or any other reasons, may not be receivable in evidence, yet any discovery that takes place in consequence of such confession, or any act done by the defendant, if it be confirmed by the finding of the property, will be admitted; as for instance, if a man by promise of favor be induced to confess that he knowingly received certain stolen goods, and that they are in such a room of his house, and the goods be found there accordingly, although the confession itself cannot in that case be given in evidence, yet it may be proved, that, in consequence of something the witness heard from the defendant, he found the goods in question in the defendant's house. Discovery made

667. Admissions or confessions to other persons than magistrates, if in writing, are proved as any other written instrument; if by parole, they are proved by parole evidence of some person who heard them. How proved.

668. In all cases, the whole of the confession should be given in evidence; for it is a general rule, that the whole of the account which a party gives of a transaction must be taken together: and his admission of a fact disadvantageous to himself shall not be received, without receiving at the same time his contemporaneous assertion of a fact favorable to him, not merely as evidence that he made such assertion, but admissible evidence of the matter thus alleged by him in his discharge. It has been said that, if there be no other evidence in the case, or none which is incompatible with the confession, it must be taken as true; but the better opinion seems to be, that, as in the case of all other evidence, the whole should be left to the jury to say whether the facts asserted by the prisoner in his favor be true. Effect of.

669. Also it may be necessary to observe, that a man's confession is evidence only against himself, and not against his accomplices; although he charge his accomplice in his hearing, and the accomplice do not deny it. So, the confession of a principal is not evidence against an accessory to prove the guilt of the principal, which must be proved *aliunde*. Good only against himself.

SECTION X.

OF THE FUNCTIONS OF THE MAGISTRATE.

670. By sections 2 and 3, Reg. IX. 1793 for *Bengal*,—sects. 2 and 3, Reg. XVI. 1795 for *Benares*,—and sects. 2 and 3, Reg. VI. 1803 for the *Ceded Provinces*,—the civil judges were constituted magistrates of the districts under their respective jurisdictions, with a provision that their local jurisdictions, as magistrates, should be the same as that of the civil court. It was however “found expedient to appoint a distinct officer to execute the duty of magistrate;” and consequently by sect. 2, Reg. XVI. 1810, the government was empowered to make such distinct appointment, and to direct whether the judge of the civil court should or should not exercise a concurrent authority as joint magistrate: and by section 6 of the same regulation, it was enacted that the officers so appointed should be guided by the regulations in force for the discharge of the duties of the magistrate's office. Appointment.

Oath of office

671. Previous to entering upon the execution of the duties of his office, a magistrate is to take and subscribe the following oath:—"I, A. B., appointed magistrate of the zillah of—, solemnly swear, that I will, to the best of my ability, preserve the peace of the zillah over which my authority extends; that I will act with impartiality and integrity, and will not exact, or receive, nor knowingly allow any other person to exact, or receive, directly or indirectly, any fee, reward, or emolument whatsoever, in the execution of, or on account of any matter relating to the duties of my office, excepting such as the orders of the governor general in council do or may expressly authorize; and that I will perform the duties of my office, according to the best of my knowledge, abilities, and judgment, conformably to the regulations that have been, or may be, passed by the governor general in council. So help me God." *Beng. Reg. IX. 1793, sect. 2. Ben. Reg. XVI. 1795, sect. 2. Ced. Prov. Reg. VI. 1803, sect. 2. Cong. Prov. Reg. IX. 1804, sect. 7.*

must be taken,

672. So long as the law remains in its present state, requiring public servants to make a declaration before entering upon their duties, it is necessary that such declaration should be made in obedience to the law. It is not proper that the act of public officers should be liable to be called in question by reason of the neglect of what the law regards as an essential form.

and recorded; and
fact reported to the
court.

All declarations should be recorded in the office in which they are made, so as to be forthcoming in case of need; and the fact reported to the court. They should be made before the officer appointed by law on that behalf, or before any *sworn* justice of the peace, or any court of civil or criminal justice. C. O. January 6, 1854. *L. P.*

Duties.
GENERAL.

673. It is the duty of the magistrate to apprehend murderers, robbers, thieves, house-breakers, all disturbers of the peace, and persons charged before him with crimes or misdemeanors. *Beng. Reg. IX. 1793, sect. 4. Ced. Prov. Reg. VI. 1803, sect. 4.*

A chief duty of
the magistrate is to
superintend and
control his subor-
dinates.

674. The value of a magistrate's service is more dependent on the skill and judgment with which he directs and controls the acts of all subordinate officers, than upon the work he can himself perform. The time of any officer exercising civil or criminal jurisdiction ought not to be employed in details, which can be well performed by the ministerial officers. No business ought to be performed by the head of the office, which can be well done by his subordinate officers, covenanted or uncovenanted, if his attending to such duties will interfere with his more important duties of directing and controlling every branch of his office, and of aiding, instructing, and encouraging each in the proper performance of the particular duties assigned to him. C. O. No. 229 of vol. 2.

675. In a dispute for the possession of moveable property, the magistrate is competent to interfere, only when it has been acquired under circumstances which would authorize the laying of a direct criminal charge, such as theft, or fraud, or criminal trespass, or the like. Const. No. 1349. C. O. No. 64 of vol. 4.

Orders of civil
court.

676. A civil judge cannot call upon a magistrate to enforce his orders if resisted. Const. No. 1209.

677. When the orders of a magistrate are not subsidiary to a civil action (as in the case of a summary award of wages under sect. 6, Reg. VII. 1819), the civil court has no

power to issue an injunction to him for the purpose of stopping execution of his order. Const. No. 1158.

678. Judicial functionaries have no power to carry into effect the decisions of punchayuts under Reg. IX. 1833, as that duty lies within the province of the revenue authorities. Const. No. 895. Decisions of punchayuts.

679. A magistrate is not competent to fine a collector of revenue for refusing, or omitting, to obey his injunction: the rule of sect. 36, Reg. XIV. 1793, is restricted to the orders of the civil courts. Const. Nos. 364 and 414. Collector.

680. The magisterial authorities are prohibited from interfering in the election, recognition, or removal of chowdhries of trades and professions. (This rule supersedes Const. No. 816.) C. O. No. 163 of vol. 3.

681. A magistrate is not competent to fine or imprison muhajuns or shroffs, who may be in the habit of demanding illegal batta on Company's rupees. Const. No. 1156.

682. A magistrate has no authority to interfere to regulate the exchange of copper into silver. Const. No. 751. Exchange.

683. Magistrates are competent to punish the offence of using short weights as a fraud, under the general regulations; but they cannot prescribe a current standard of weight. Const. No. 1274. Short weights.

684. On the death, resignation, or removal of a canoongoe, the records of his office are to be made over to his successor; and the magistrate is enjoined, on the application of the collector, to interpose his authority, in all cases in which it is necessary to enforce the surrender of such records. And the refusal or manifest evasion of any person in possession of such records to deliver them up, on the requisition of the magistrate, subjects him to the penalties prescribed by the regulations for resistance to the process of the magistrate. *Ced. Prov. and Ben.* Reg. IV. 1808. sects. 9 and 10. *Shahabad, Tirhoot, Sarun, Patna and Behar*, Reg. II. 1816, sects. 9 and 10. *Ramghur, Bhaugulpore, and Purnea*, Reg. II. 1817. *Cuttack, Puttaspore, and the Pergunnahs dependent on it*, Reg. V. 1816, sects. 9 and 10; extended to *Midnapore and Hidgelee* by Reg. XIII. 1817. *Bengal*, Reg. I. 1818. sect. 2; and Reg. I. 1819, sect. 3, cl. 1. Magistrate is to compel the surrender of the records of a canoongoe.

685. It is the desire of government that the attention of the several magistrates should be given to the adoption of measures for improving and preserving the healthiness of their sudder stations and of their districts generally. C. O. Govt. *Bengal*, April 21, 1854. the healthiness of sudder station.

686. It is the duty of a magistrate or joint magistrate residing at the same station with the collector or deputy collector, to assume charge of the treasury of the revenue officer, during the authorized or unavoidable absence of the latter. All public functionaries are required to receive charge of public property when the officer having custody is unable, from any circumstances, to retain charge of it. C. O. No. 81 of vol. 3. *L. P.* Magistrate to assume charge of treasury;

687. Magistrates should observe great caution, in addressing publications of a general nature to the inhabitants of the provinces; and should refrain from such measures without addressed to the

and the police, are not to be promulgated without sanction.

the sanction of government, when the delay in obtaining such sanction would not cause material public inconvenience, or at least without the knowledge and concurrence of the nearest local authority to which they are subject. So also magistrates should be particularly cautious in the promulgation of general or circular orders and instructions connected with the police; and they are enjoined to furnish the superintendent of police with a copy of all such orders which they deem it necessary to issue, immediately on their promulgation; or previously, if they are liable to objection. The superintendent of police will direct the magistrates to rescind, alter, or modify any such orders; and session judges will not interfere in any way with the exercise of this power. In more important matters such orders must be submitted to government; and serious notice will be taken of any breach of these rules. C. O. Nos. 112 and 264 of vol. 1; and No. 7 of vol. 3, para. 2. *L. P.* Const. No. 382, paras. 4 and 5. C. O. Sup. Pol. *L. P.* No. 3 of 1838; and No. 6 of 1844.

So also enquiries into the resources of a district.

688. Magistrates are prohibited from making enquiries into the resources of the district, its population, mineral productions, &c., by means of the police, without the sanction of the superintendent of police. C. O. Sup. Pol. *L. P.* No. 7 of 1841.

Public business to be transacted in public offices.

689. In reply to a question whether magistrates can, under any circumstances, be permitted to transact the current business of their offices in their private dwellings, the court deemed it sufficient to observe that, when sitting as a criminal judge, the magistrate must sit in the established court house; and that they did not consider it necessary to enter upon the general question of the powers of a magistrate out of office. But it is said that the practice of transacting public business in private residences is objectionable, and it is interdicted. Const. No. 645. C. O. No. 21 of vol. 2.

Two orders in one case to be kept distinct.

690. When of two orders passed in any case one is appealable to the sessions court and the other final, they are to be kept distinct and separate, and to be recorded in separate proceedings. C. O. No. 135 of vol. 3.

Register books.
*Appendix B, No. 4.
† *Ibid*, No. 5.

‡ *Ibid*, No. 7.
§ *Ibid*, No. 8.
|| *Ibid*, No. 9.
¶ *Ibid*, No. 10.
** *Ibid*, No. 11.
†† *Ibid*, No. 12.

†† Appendix B, No. 6.

691. The magistrate is to keep up two general register books; viz. *First*, a general register of all applications preferred direct to the magistrate;* *Second*, a general register of all reports received from the police darogahs:† and six books of subordinate entry; viz. *First*, a book of heinous offences;‡ *Second*, a book of petty offences;§ *Third*, a book of appeals from subordinate courts;|| *Fourth*, a book of references or proceedings received from other districts;¶ *Fifth*, a book of cases preferred under Act IV. 1840;** and *Sixth*, a book containing all miscellaneous matters.†† All criminal cases are to be entered in the first instance in either of the general registry books, and then transferred to one of the subordinate ones for trial and disposal, excepting of course the cases referred to the subordinate tribunals. When cases are finally decided, they should be sent to the record-keeper, who should keep a general register,‡‡ in which he should enter all cases thus received, giving the number of the case and other particulars, an abstract of the final order, and a note of the part of the office in which he has placed the papers. C. O. No. 144 of vol. 3.

Magistrate proceeding into the

692. Magistrates ought frequently to visit the interior of their districts, and to make themselves more accessible to the people than they can be at the sudder station. C. O. Sup. Pol. *L. P.* No 15 of 1839.

693. Whenever a magistrate has occasion to proceed into the mofussil, he is to to the superintendent of police the date of his departure, and that of his return to the station, as well as the cause of his departure. In the Western Provinces, where the tracy is still united with the collectorship, it seems that an officer must apply to the commissioner for leave to proceed into the interior of his district; but in the Lower Provinces this permission is no longer required. (v. C. O. No. 7 of vol. 3, para. 5. *L. P.*)—C. O. No 10 of vol. 3, *L. P.* and No. 97 of vol. 2. *W. P.*

694. An officer, whose salary and other allowances amount in the aggregate to less than the rate of 23,000 rupees a year, is entitled to travelling allowance at 5 rupees a day, while actually employed in the interior of his district, or so much within that allowance as to make his total receipts amount to that rate. Bills for this allowance are to be countersigned by the superintendent of police. Govt. Orders Jany. 13, 1840. C. O. Sup. Pol. *L. P.* No. 16 of 1838, and No. 162 A. Feb. 12, 1840. Travelling allowance

695. Any covenanted officer, entitled under the existing rules to travelling allowances when absent from his station on duty in the interior of his district, may draw travelling allowance, at his option, either by the distance travelled at the rate of 8 annas a mile, or by the number of days he is absent from the sudder station at the rate of 5 rupees a day; the bill for the charge so incurred being countersigned by the commissioner of the division. Orders Govt. *India*, August 14, 1855. C. O. Govt. *Bengal*, No. 29, October 29, 1855. But this has reference chiefly to those occasions on which an officer may have to quit his station for some sudden and temporary excursion into the interior of his district; and not to the case of a magistrate proceeding on his regular tour of inspection in the cold weather. A magistrate can only draw travelling allowance according to one or the other of the two methods of calculation in the same bill, it being optional to him to select the one which he prefers to go upon for the whole period of his absence from the sudder station. C. O. Govt. *Bengal*, No. 35, June 20, 1856. may be drawn either per diem, or by the mile; but must be drawn at one uniform rate during the whole period of absence.

696. Whenever an officer of any department, travelling on duty, is entitled to draw travelling allowance reckoned by mileage, and he travels the whole distance, or any portion of the distance, by railroad, he is to charge for such distance at the rate of 3 annas per mile only, if he is an officer entitled to charge ordinarily at the rate of 8 annas or upwards per mile; and at the rate of 1½ anna per mile only, if he is an officer entitled to charge ordinarily at a rate below 8 annas. C. O. Govt. *Bengal*, No 36, August 6, 1856. Rate if any part is travelled by railroad.

697. Government will sanction, as occasion may be shown, the purchase of single-poled tents at the expense of rupees 350 each, for the use of magistrates. Govt. Orders, Sept. 8, 1840. C. O. No. 65 of vol. 3. *L. P.* C. O. Sup. Pol. *L. P.* No. 22 of 1840. Purchase of tent for magistrate;

698. If an assistant magistrate, appointed to a sub-division, requires a tent, a report should be made to the superintendent of police. C. O. Sup. Pol. *L. P.* No. 5 of 1846. for assistant to the magistrate.

699. The session judge is to report to the nizamat adawlut every instance, in which the magistrate has been guilty of neglect, or misconduct, in the discharge of his duty; and Neglect or misconduct on the part of the magi

to be reported to the nizamut adawlut ;

omits or refuses to obey his orders. *Beng. Reg. IX. 1793, sect. 63. Ced. Prov. Reg. VII. 1803, sect. 30. C. O. No. 233 of vol. 2 para. 3.*

which court is to enquire and to report to government, or to advise and admonish the offender.

700. Upon a report made in pursuance of the foregoing provision, the nizamut adawlut, after such inquiry as may be judged necessary in proof or explanation of the circumstances stated, is to report the case to government, if it appears to require such notice, with a copy of all proceedings and papers received on the subject of it. And in all cases wherein a covenanted servant of the Company employed in any of the criminal courts, or in any office of police, appears to the nizamut adawlut to have been guilty of neglect of duty, or of other misconduct not expressly provided for by the regulations, that court is either to report the same to government, or to advise and admonish the party, as the case may require. *Beng. and Ben. Reg. II. 1801, sect. 14. Ced. Prov. Reg. VIII. 1803, sect. 24.*

Charge of office

701. When the charge of the office of magistrate devolves, from death, indisposition, or other casualty, to the senior assistant on the spot, without any express provision for the same having been made by government, an immediate report of the circumstances of the case is to be made by such assistant to government ; and, till the receipt of orders, he is to confine himself to the discharge of his own duties, and to the exercise of such part of the powers of the magistrate as may be indispensably necessary for the immediate execution of processes from the sessions court and the nizamut adawlut, for preserving the peace of the district, or for such other cases of emergency, as will not admit of delay. *Beng. and Ben. Reg. IV. 1796, sect. 5. Ced. Prov. Reg. XII. 1803, sect. 15.*

What proceedings of his predecessor, if left unsigned, a magistrate may sign.

702. A magistrate having left certain roobacarees unsigned, on leaving the station on sick certificate, the acting magistrate was directed to sign the roobacarees, the orders of which might be recorded in the magistrate's English note-book in his hand-writing, certifying thereon that he had compared them with the note-book. In cases in which no note was recorded, the acting magistrate was directed to pass such order as might, on inspection of the proceedings, appear just and proper, leaving the party dissatisfied with it to appeal in the regular course. *Const. No. 729.*

Powers.

In petty offences extending to 15 days, or a fine of 50 rupees ;

703. The magistrates are empowered to hear and determine, without any reference to the sessions courts, all complaints or prosecutions brought before them for petty offences, such as abusive language, calumny, inconsiderable assaults, or affrays ; and to punish the offender, when convicted, by committing him to prison for a term not exceeding 15 days, or by imposing a fine upon him ; but the fine is in no case to exceed 50 rupees, unless the offender is a zumeendar, independent talookdar, or other actual proprietor of land, paying an annual revenue to government of more than ten thousand rupees ; or a proprietor of ayma land, paying a quit revenue to government exceeding five hundred rupees per annum ; or of lakhiraj land, the annual produce of which is above one thousand rupees ; in which cases such offender is liable to a fine not exceeding 200 rupees. The magistrate is to fix the amount of the fine upon a due consideration of the nature of the case, and the situation and circumstances in life of the offender. *Beng. Reg. IX. 1793, sect. 8. Ced. Prov. Reg. VI. 1803, sect. 8.*

and in cases of petty theft, extend-

704. The magistrates are authorized to hear and determine, without any reference to sessions courts, all complaints or prosecutions brought before them for petty thefts, when

they have not been attended with any aggravating circumstances, or committed by persons of notorious bad character, and inflict upon the offenders corporal punishment not exceeding 30 ratans, or commit them to prison for a term not longer than one month, according as they think proper, upon consideration of the circumstances of the case. (a) *Beng. Reg. IX. 1793, sect. 9. Ced. Prov. Reg. VI. 1803, sect. 9.*

705. In addition to the above powers, magistrates are further empowered, in all cases of conviction before them of any criminal offence punishable under the Mahomedan law and the regulations,—for which the above mentioned penalties are insufficient, or to which the above rules are not expressly applicable, and for which a more severe punishment than six months' imprisonment, with thirty ratans, or a fine of 200 rupees, has not been specifically prescribed, (in which case the prisoner, if there appear grounds for it, is to be brought to trial before the sessions) —to pass sentence of imprisonment not exceeding 6 months, with corporal punishment not exceeding 30 ratans in cases of theft, or in other cases with a fine not exceeding 200 rupees, commutable if not paid, to a further period of imprisonment not exceeding 6 months; so that the entire period of imprisonment, under the sentence of a magistrate, in no case exceeds one year. *Reg. IX. 1807, sect. 19.*

706. A sentence of imprisonment for one year in lieu of stripes in addition to a sentence of six months' imprisonment passed by a magistrate, is not illegal under the wording of cl. 2, sect. 2, *Reg. II. 1834. (b) Const. No. 1183.*

707. In addition to the sentence which a magistrate is empowered to pass by the above provisions, he is competent in certain cases to require the prisoner to furnish security to keep the peace, or in default to be imprisoned for that additional period, under *Act V. 1848. Const. No. 1290.*

708. In cases in which a magistrate may sentence to a term of imprisonment with labour, and also a fine commutable to a further period of imprisonment, the power of awarding labor extends equally to the latter period as to the former period; and in both cases the labour is commutable to a fine under cl. 1, sect. 3, *Reg. II. 1834.* If labour is not awarded for the first period, it should not of course be awarded in the second. *Const. Nos. 972 and 1264.*

709. If a magistrate considers the sentence, which he is competent to pass under the above provisions, insufficient for the offence, he should commit the prisoner to the sessions. *Const. No. 85.*

710. It rests with a magistrate to determine what is a "petty offence" and the commensurate punishment, provided he do not exceed the limitation prescribed as above for such cases. *Const. No. 1353.*

711. A conviction by a magistrate in a trial, on the result of which he is expressly authorized by sect. 19, *Reg. IX. 1807* to pass sentence to the extent specified therein, is not

ing to 30 ratans or one month.

General power extending to six months' imprisonment, plus fine of 200 rupees or additional six months'; —and in cases of theft extending to six months' imprisonment plus 30 ratans;

or one year in lieu of stripes;

and also, in certain cases, one year in default of security.

Labor.

When magistrate deems such sentence insufficient.

is character of the offence.

Conviction by a magistrate on trial is not a conviction without trial.

(a) For powers in more serious cases of theft and other crimes, see the sections which specially treat thereof.

(b) For the rules for the substitution of additional imprisonment for corporal punishment, see subsequent section "of corporal punishment."

liable to be impeached as "a conviction without trial," on the ground of its not being a "regular trial before a judge aided by his law officer." Const. No. 259.

Misdemeanor.

712. A magistrate is competent to punish as a misdemeanor, under the general powers vested in him by sect. 19, Reg. IX. 1807, any act which is declared by the regulations to be an offence, but for which no punishment is specified. Const. No. 1305.

Defendant must appear in person to receive sentence.

713. A defendant is bound to appear in person before the magistrate to receive sentence. And sentence should not be passed in the absence of a defendant, who has been allowed to answer and defend a charge against him by attorney. Reports *L. P.* 1854, part 1, page 433.

If doubtful on point of law may apply to law officer,

714. If a magistrate is doubtful as to the law, he should apply to the law officer for assistance. Const. No. 617.

or remembrancer.

715. The remembrancer of legal affairs may furnish magistrates, when acting either administratively or judicially, with his opinion on points of law arising before them, which they may submit to him. C. O. Sup. Pol. *L. P.* No. 4 of 1852.

Sentences beyond competency are quashed.

716. A magistrate having passed a sentence which was beyond his competency, the *nizamut adawlut* quashed the proceedings, and directed him to commit the prisoner to the sessions. Const. No. 684. The session judge in appeal can also quash proceedings under the same circumstances. *See section of Appeals.*

If within competency, he may punish without reference.

717. A magistrate may decide and pass sentence of punishment, without reference to the sessions court, provided he does not exceed his competency under sect. 19, Reg. IX. 1807. Const. No. 121.

Magistrate has not power to punish a prisoner, acquitted by the sessions court, for a minor offence included in the trial of the charge on which he has been acquitted.

718. A prisoner was tried and acquitted by the sessions court on a charge of uttering counterfeit coin with intent to defraud; the magistrate subsequently sentenced the prisoner to a fine for having counterfeit coin in his possession, and not showing good and sufficient cause for the same. This was held to be irregular, because the latter point must have formed part of the trial on the charge of which the prisoner was acquitted by the sessions court. Const.

Duties of magistrate and collector vested in one person.

719. It is competent to the governor general in council to authorize a collector of revenue, or other officer employed in the management or superintendence of any branch of the territorial revenues, to exercise the whole or any portion of the powers and duties vested by the regulations in the magistrates or joint magistrates, or to employ a magistrate, joint magistrate, or assistant to a magistrate, in the collection of the public revenue. Reg. IV. 1821, sect. 2.

In such case, oath to be

regulations and orders by which to be guided;

720. If a collector, or other revenue officer, is so appointed to perform the duties of a magistrate, or joint magistrate, he is to take and subscribe the oath prescribed by sect. 2, Reg. IX. 1793, and cl. 1, sect. 8, Reg. XIII. 1793, with such verbal alterations only, as may be consonant to the nature of the appointment. He is to be guided in the execution of those duties by the regulations which have been, or may be, enacted for the guidance of those officers respectively, and by the orders of the superior courts of criminal judicature in all matters in which a controlling or superintending power is vested in those courts. And he

is also to be careful to preserve the records of his judicial and revenue offices separate, and distinct from each other. Reg. IV. 1821, sections 3, 4, and 5. and separation of records.

721. The magistrate and collector should leave all the business of the office at the sudder station to the joint magistrate and deputy collector, with the aid of the assistants; reserving to himself the general control of the police, and a general knowledge of the manner in which the business is conducted by his subordinates, to enable him to interfere whenever he may, for any special cause, deem it necessary. It is important that the native establishments, as well as the people, should see that the chief control is retained in the hands of the magistrate and collector, and that he is equally anxious in regard to every part of his duties. To effect this, he must limit himself to matters of real importance, leaving the details, under control on his own part, in the hands of his subordinates, and not doing business which can be efficiently performed by them. Such officers are strictly prohibited from holding cutcherry at the same time in the judicial and revenue departments. C. O. No. 151 of vol. 2. Head of the of-
bordinates.

Not to hold cut-
cherry in both de-
partments at the
same time.

722. The duties of a magistrate vested in a collector cannot be delegated to an assistant under sect. 8, Reg. IV. 1821 (which defines the duties of an assistant to the collector) in those cases in which such delegation would be contrary to the provisions of Reg. IX. 1807, Reg. III. 1821, or Reg. I. 1822. Const. No. 603. What magisteri-
al duties may be
entrusted to the as-
sistant collector.

723. The two branches of a magistrate and collector's duty are in fact closely united, and it is impossible precisely to describe how the services of the joint magistrate and deputy collector are always to be called into exercise. But as an impression has sometimes arisen, from the charge of the magistracy being entirely devolved on the subordinate, that the duties of the collector are the higher and more important, the notice of magistrates and collectors is particularly called to the point, that they are considered as vested with the entire responsibility for the due performance of all their duties, and that nothing less than an order of government, which may for peculiar reasons at any time relieve them from a particular portion of their duty, can be pleaded in bar of that responsibility. The magisterial functions are those in which the responsibility should be most felt. Govt. Order *W. P.* No. 703, April 19, 1841. Responsibility of
the whole rests
with the head of
the office.

724. In case of an officer being vested with magisterial powers, and deputed permanently or temporarily to exercise them within a portion of a district, or of an officer's being placed in charge of a tract of country comprising portions of several jurisdictions, it is competent to government, at the time of erecting such authority, or at any time subsequently, to determine and prescribe by an order, under the official signature of a secretary to government, at what station and in what manner prisoners committed to take their trial before the sessions, for offences perpetrated within the limits assigned to such officer, are to be brought to trial for the same. Notice of such determination is to be given to the nizamat adawlut, which court is to take the necessary steps. Reg. VIII. 1822, sect. 6. **Independent
joint-magis-
tracy creat-**

Government to
decide how and
where the sessions
are to be held.

725. Whenever magistrates require detachments of troops, for the apprehension of public offenders, or for the maintenance of the peace in their respective districts, they are to state in writing, as fully and circumstantially as is practicable, the nature of the service, **Requiring
the aid of the
military.**

Applications how
to be made.

required to be performed, to the officer commanding the corps or companies, from which the detachment is to be furnished; leaving it to the commanding officer, on consideration of the circumstances stated, to judge of the strength of the force which should be employed in the execution of the duty in question. Reg. XI. 1806, sect. 14, cl. 1.

Responsibility of
sta-
dis-

grant the
required aid.

Requisition to
be made only in
cases of absolute
necessity, and ma-
gistrate to report
to government.

726. The power thus vested in the magistrate, being founded upon the nature and exigency of the case, which may frequently require promptitude and decision, and will seldom admit of a reference to government; it is the duty of commanding officers immediately to furnish the necessary military aid, whenever applications are regularly and publicly made to them by the magistrates for troops for the maintenance of the peace, or for the support of the general police of the country. By those means the responsibility of calling in the aid of the military rests with the civil magistrates; and the allotment of the force depends upon the officers commanding; who are not, however, on occasions of this nature, to exercise any discretion in granting or withholding the required aid.(a) But as it is, at the same time, essential to restrict the employment of military force to cases of absolute necessity, the magistrates are enjoined to confine their requisitions to cases of that description, and to report to government, whenever they may apply for military aid under this section; at the same time furnishing government with the necessary information respecting the circumstances upon which the application has been grounded. Reg. XI. 1806, sect. 14, cl. 2.

Report.

727. The report thus ordered to be sent to government is to be full and distinct; and copies of it are to be sent to the superintendent of police, and the session judge; the latter is to forward it to the nizamut adawlut with his own sentiments on each case, but is not to issue any orders direct to the magistrate. C. O. No. 68 of vol. 2; and No. 7 of vol. 3, para. 4. *L. P.* Const. No. 40.

Commanding
officer to report
to commander-in-
chief.

728. The officers commanding troops, by whom such detachments are furnished, in pursuance of the applications of the magistrates, are immediately to transmit the necessary reports thereof to the commander-in-chief. Reg. XI. 1806, sect. 14, cl. 3.

**Military
guards.**

729. The magistrates, and other public officers authorized to require permanent guards for the protection of the public treasuries, stores, or other property, are to state fully and

(a) " Upon the duty of officers and troops, during a time of riot and tumult, which had been too long left in doubt, a clear light was also thrown by the mild and gentle wisdom of Chief Justice Tindal, when he presided over the special commission at Bristol. 'It may be safely concluded that if the excitement which led to the defiance of the law at the earlier period of the day had never existed, the weightier crimes subsequently committed by the populace would not have taken place. The beginning of the tumult is like the letting out of water; if not stopped at first, it becomes difficult to do so afterwards; it rises and increases until it overwhelms the fairest and most valuable works of man. The soldier is still a citizen lying under the same obligation and invested with the same authority to preserve the peace of the kingdom as any other subject. If the one is bound to attend the call of the civil magistrate, so also is the other; if the one may interfere for that purpose, when the occasion demands it, without the requisition of the magistrate, so may the other too; if the one may employ arms for that purpose, when arms are necessary, the soldier may do the same. Undoubtedly the same exercise of discretion, which requires the subject to act in subordination to, and in aid of the magistrate, rather than upon his own authority, before recourse is had to arms, ought to operate in a still stronger degree with a military force. But where the danger is pressing and immediate, where a felony has actually been committed, or cannot otherwise be prevented, and from the circumstances of the case no opportunity is offered of obtaining a requisition from the proper authorities, the military subjects of the king, like his civil subjects, not only may but are bound to do their utmost, of their own authority, to prevent the perpetration of outrage, to put down riot and tumult, and to preserve the lives and property of the people.'" *Townsend's Modern State Trials*, vol. 2, page 279.

circumstantially the nature of the service necessary to be performed to the officer commanding the corps from which the guards are required. On receipt of such information, the commanding officer is to furnish guards of such strength as he may deem necessary; provided that no public objection occurs to a compliance with the application, and that he is satisfied that the civil officer is entitled to make such application by the general rules and usages of the service. But the commanding officer is at liberty, in case he deems it necessary or proper on any public grounds, to suspend compliance with the application, and to refer the case to the commander-in-chief, who is to forward the representation to government for its decision, or to pass such orders as may appear to him to be proper. Reg. XI. 1806, sect. 15, cl. 1, and sect. 18.

730. No augmentation is to be made in the number or strength of permanent guards without the express sanction of government. Reg. XI. 1806, sect. 15, cl. 2.

Permanent guards not to be increased.

731. The same rules are to be observed in applications for temporary escorts, as in those for permanent guards. Reg. XI. 1806, sects. 16 and 18.

Temporary escorts.

732. Magistrates and other officers in the judicial department are to transmit to government, on the first of each month, a statement of the guards, detachments, and escorts employed by them in the preceding month. Reg. XI. 1806, sect. 17.

Monthly statements of guards employed to be sent to government.

733. Whenever it appears advisable to a magistrate to depute his assistant, or any European officer acting under his authority, being a covenanted servant of the Company, to make a local investigation within the limits of his district, for the purpose of speedily and satisfactorily determining a boundary dispute, or other subject of inquiry in the foudaree court, which from the circumstances of the case appears to require the deputation of an European officer, instead of the employment of a local police officer, it is competent to the magistrate to order such deputation, and to furnish the officer so deputed with such instructions as appear necessary;—provided that such instructions are not inconsistent with the general regulations in force. Reg. XI. 1824, sect. 2.

Deputation by magistrate of European officer.

Power to depute and to furnish instructions.

734. Whenever the deputation of an European officer may be ordered at the request of a party in a suit, or for the purpose of inquiring into any local question of private right between two or more individuals relative to a case depending in the foudaree court, it is at the discretion of the magistrate, by whom the deputation is ordered, or who is to determine the case to which it relates, to declare the whole or any part of the usual deputation allowance receivable by the officer so deputed, as well as every other authorized and necessary expense attending the local inquiry, to be payable by the party against whom the case is adjudged; or proportionally by each of the parties, if this appear just on due consideration of all the circumstances of the case. But if in any instance the magistrate is of opinion that it would not be proper from indigence or other cause to render the parties, or either of them, answerable for the whole or any part of the deputation allowance, he is authorized to discharge the same (subject to the usual audit) on the part of government. Reg. XI. 1824, sect. 3.

May declare by whom the deputation allowance is to be payable.

735. Such deputation charges, if not paid by the parties, are to be realized by the same process as costs of suit in civil cases; and a commissioner of circuit is competent to exercise the same power as the magistrate in ordering the deputation of an assistant duly

Charges how to be recovered; and power of superior courts.

qualified (i. e. vested with special powers), and to adjudge the payment of his deputation charges. Const. No. 678.

Deputations to
be reported to go-
vernment ;

736. Such deputations are to be immediately reported to government, with a statement of the circumstances of the case ; and the return of the officer so deputed is also to be immediately reported. Reg. XI. 1824, sect. 4.

and to the session
re.

737. A report of such deputation is also, in every instance, to be made without delay to the session judge, together with a copy of the proceedings : and if the reasons stated for the deputation do not appear sufficient, and the judge deem it unnecessary, or inexpedient, he is competent to revoke it, transmitting at the same time copy of his order with the proceedings and papers connected therewith to the nizamut adawlut, who will issue such final orders as they may deem just and proper. Reg. XI. 1824, sect. 5.

to be made
in cases of urgency.
Parties may attend.

738. Such deputations are not to be made except in cases of urgency, and for a short period. The parties are at liberty to attend the local investigation in person, or by any authorized agent. Reg. XI. 1824, sect. 6.

SECTION XI.

OF THE FUNCTIONS OF THE JOINT MAGISTRATE.

Appointment.

739. Whenever it appears necessary for the despatch of public business, or for any purpose of police, or otherwise, to appoint an assistant magistrate(*a*) in any zillah or in any part thereof, it is competent to government to make such appointment under the provisions contained in this regulation. Reg. XVI. 1810, sect. 4.

Oath.

740. Previously to entering upon the execution of his duties, the joint magistrate is to take and subscribe the oath prescribed for the office of magistrate, with such verbal alterations only as may be consonant to the nature of the appointment. Reg. XVI. 1810, sect. 5.

To be guided by
the regulations.
Invested with full
powers of magis-
trate.

741. The joint magistrate is to be guided by the general regulations, as far as they are applicable to his duties ; and, for the due execution of such duties, he is invested with the same powers, as by the regulations are vested in the magistrate. Reg. XVI. 1810, sect. 6.

To be guided by
the instructions of
the nizamut adaw-
lut.

742. The special duties to be performed by a joint magistrate are to be determined by government ; but in all matters relating to practice and form, as well as in all points not specifically provided for by this, or any other regulation, he is to be guided by the instructions of the nizamut adawlut. Reg. XVI. 1810, sect. 7.

(*a*) The reader will mark the difference between an assistant magistrate, and an assistant to the magistrate : the former is now always called a joint magistrate, which term is exclusively applied by the regulation, from which the above quotation is made, to such magistrates as were vested (by section 3) with a concurrent authority in a contiguous jurisdiction. To prevent confusion, the title of joint magistrate, as now in use, is substituted throughout the text for that of assistant magistrate, which is obsolete. The rules here quoted have, of course, no application to independent joint magistrates who are in fact magistrates of subordinate districts in which there is no session judge, the sessions being held by the judge of a neighbouring zillah.

743. All process issued by a joint magistrate is to be under his official seal and signature; and is to be executed by the officers employed under himself, or by those of the magistrate, as circumstances may direct, and may appear most conducive to the public service. The magistrates, their police officers, and all other persons acting under them, are required to aid and support the joint magistrates, appointed under this regulation, in the execution of any process issued by them under their official seals and signatures; and resistance to any process so issued is punishable in like manner as resistance to the process of a magistrate. Reg. XVI. 1810, sect. 8.

Process of, how to be executed.

744. A joint magistrate (when not acting as magistrate, in the absence of the latter) is to be considered subordinate to the magistrate, in the general discharge of his official duties, as far as is consistent with the provisions contained in this regulation. In all cases of a difference of opinion between the magistrate and a joint magistrate, the latter is to conform to the directions of the former, until a reference can be made to the superior courts, for a determination upon the subject. But it is not intended that any appeal should lie to the magistrate from the sentence of a joint magistrate, whether for punishment, or acquittal, or from his orders for the commitment of prisoners, or holding them to bail to take their trial at the sessions; the joint magistrate being vested with the full powers of magistrate in all such cases, within his jurisdiction, and his proceedings therefore being open to the regular control of the superior courts. Reg. XVI. 1810, sect. 9.

Joint magistrate subordinate to magistrate.

Appeal from, does not lie to magistrate.

745. When not stationed at the same place with the magistrate, he is authorized, in all cases requiring despatch, to correspond directly with government, the nizamat adawlut, the session judge, or other public authorities. But all monthly and other periodical reports or accounts, which may be required from a joint magistrate, and generally all official communications, which he may have to make to any superior authority, and which may not require immediate despatch without passing through the magistrate, are to be transmitted through the channel of the latter, provided he is not absent from his jurisdiction. Reg. XVI. 1810, sect. 10.

Reports, accounts, &c. generally through magistrate.

746. The police and other establishments of native officers, employed under a magistrate, and not ordered to be placed under the immediate authority of a joint magistrate, will continue under the usual control of the magistrate. But all native officers so employed are directed to furnish any joint magistrate, having authority over them under this regulation, with every information required from them, as well as generally to obey all orders issued to them by him, on pain, in case of neglect or failure, of being fined, suspended, or dismissed from office under the authority, or at the representation of such joint magistrate according to the regulations in force. Government further retains a discretion of placing any part of the police, or other public establishments, under the immediate control of a joint magistrate, when it may appear expedient. Reg. XVI. 1810, sect. 11.

POLICE.
How far subordinate to.

May be placed under his immediate control.

747. When the police establishment of the thanas, within the limits of a joint magistrate's jurisdiction, have not been placed under his immediate authority by an order of government, in conformity with the above provision, the whole of the native officers composing those establishments continue under the control of the magistrate of the district. Appli-

When not so, under the control of magistrate.

Example.

cations for leave by the officers of the thanas so situated, should be forwarded to the magistrate, through the joint magistrate, to enable the latter to state any objections which he may have to offer against a compliance. Const. Nos. 210 and 232.

Invested with exclusive control in their local jurisdictions.

748. But by an order of government, dated January 6, 1825, it was directed that the joint magistrate should always possess exclusive control over the police establishments maintained in the local jurisdictions assigned to them. C. O. No. 306 of vol. 1.

GOVERNMENT
ORDERS NOV. 1ST.
1831.

Residence.

749. Joint magistrates shall ordinarily reside at the sudder station of their principals. Government Resolution, November 1st, 1831.

Subordinate to
magistrate.

With full powers
of magistrate un-
less interdicted.

Responsibility
when not indepen-
dent.

Appeal.

Responsibility,
when independent.

Appeal.

Subject to gener-
al instructions of
magistrate.

Report of dele-
to,

Irresponsibility

Power of session

750. *Rule 4.* A joint magistrate is in all respects subordinate to the magistrate, and is required to obey any orders the latter may see fit to issue. *Rule 6.* He is competent to exercise the full powers of a magistrate, unless interdicted from the exercise of such powers by his superior, who is of course at all times competent to limit, or extend, the jurisdiction of his subordinate. *Rule 10.* Whenever the joint magistrate is acting in subordination to his principal without any independent authority, all acts done by him are held to be subject to his sole responsibility; but having undergone the revision of the magistrate are subject to their joint responsibility, and are appealable to the session judge. *Rule 11.* In like manner all acts done by the joint magistrate, when acting independently of his principal, rest on his own responsibility, and all appeals from such acts lie direct to the session judge. It is at all times competent to the magistrate to issue any general instructions, which he may deem necessary to his subordinate; and the subordinate officer, whenever he is officiating as magistrate, is to conform to all orders he may receive from him, provided of course that such principal is resident within the limits of the district. It is not necessary for the magistrate to make a report to the superintendent of police and session judge, for their respective consideration and orders, in cases, where the joint magistrate may exercise the full powers of the magistrate, except where he deems it necessary or expedient to divest himself altogether, for the time being, of magisterial duties; and in all such cases those officers are to report the circumstance to government. *Rule 12.* It is also to be clearly understood that the magistrate is competent to resume at any time the duties, which he may have temporarily confided to the joint magistrate. *Rule 13.* In all instances in which a joint magistrate is officiating as magistrate, and receives general or specific instructions from his superior, he is to be held exempt from all responsibility which may attach to a punctual observance of such instructions. *Rule 15.* The superintendent of police is authorized, whenever he may think proper, to interfere with any arrangements in regard to matters of police made by the magistrates for the employment of joint magistrates or other assistants, or the distribution of business to be assigned to those functionaries; and the session judge may exercise the same power in all matters connected with the trial and decision of cases. Any interference of this nature will of course be exercised on the responsibility of the officer so interfering, and not without apparent necessity; and magistrates, after obeying the order, are allowed a reference to the nizamat adawlut or government, as the case may be. Government Resolution, November 1st, 1831.

751. As under the above orders, joint magistrates are competent and required to exercise the full power of magistrate, unless interdicted from the exercise of such power by their superior ; they are empowered to try appeals from the orders of sudder ameens in petty criminal cases. Const. No. 1231. May try appeals from subordinates.

752. But deputy magistrates, and uncovenanted judges exercising magisterial powers, are not to exercise appellate authority ; and petitions of appeal, whether from covenanted or uncovenanted subordinates, are not to be referred to them for decision. C. O. No. 22 of vol. 4. *L. P.* But no other officers exercising full powers can try appeals.

753. A joint magistrate is competent, under the 6th rule of the above resolutions, unless expressly interdicted by the magistrate, to commit prisoners to the sessions ; and it is not necessary for the magistrate to revise his commitments : nor can the magistrate reverse an order of commitment made by a joint magistrate residing at the sudder station without independent jurisdiction. Const. Nos. 911 and 906. Competent to make commitments to the sessions.

754. Under Act XXXI. 1841, all appeals from a joint magistrate, of whatever powers, are appealable exclusively to the session judge. Const. No. 1326. Appeals from.

755. A magistrate may refer to a joint magistrate, not holding independent jurisdiction, criminal cases for report ; though, with reference to the respective powers of those officers, the measure should be resorted to as seldom as possible. Const. No. 1234. Cases may be referred to, by magistrate, for report.

SECTION XII.

OF THE FUNCTIONS OF THE ASSISTANT TO THE MAGISTRATE.

756. Previous to an assistant's entering upon the exercise of judicial authority, he is to take and subscribe before the magistrate the following oath ; —“ I, A. B., assistant to the magistrate of the zillah of —, solemnly swear, that I will, to the best of my ability, assist the said magistrate in preserving the peace of the zillah over which his authority extends ; that I will act with impartiality and integrity, and will not exact or receive, nor knowingly allow any other person to exact or receive, directly or indirectly, any fee, emolument, or reward whatsoever, in the execution of any matter relating to the duties of my office, excepting such as the orders of government do or may expressly authorize ; and that I will perform the duties of my office, according to the best of my knowledge, abilities, and judgment, conformable to the regulations that have been or may be passed by the governor general in council. So help me GOD.” *Beng. and Ben. Reg. XIII. 1797, sect. 2. Ced. Prov. Reg. XII. 1803, sect. 17.* Oath.

757. Under the above provisions, an assistant, on removal from one district to another, whether under the orders of government or the commissioner of the division, should take prescribed oath of office before the magistrate of the zillah to which he may have been newly appointed : and the magistrate is, in such cases, competent, and indeed required by the Must be taken on entering upon office, whether taken before in another district or not.

To be recorded in the office and reported to the court.

above provisions, to administer it to him without any special orders from government on the subject. Const. No. 850. And so long as the law remains in its present state, it is necessary that such declarations, should be made in obedience to it. They should be recorded in the office in which they are made, so as to be forthcoming in case of need, and the fact reported to the court. C. O. January 6, 1854. *L. P.*

Powers.

Judicial powers to be exercised by, the same as the (minor) powers of the magistrate.

In the exercise of such powers, to be guided by the regulations enacted for the guidance of magistrate.

But may not exercise the higher powers of magistrate.

limited imprisonment;

15 days;

and in cases of theft

758. An assistant, who has taken and subscribed the foregoing oath, is authorized to exercise the judicial powers vested in the magistrate by the established regulations, as far as may be necessary to enable him to perform the duties committed to him by the magistrate. *Beng. and Ben. Reg. XIII. 1797, sect. 3. Ced. Prov. Reg. XII. 1803, sect. 18.*

759. Assistants, exercising judicial powers under the above provisions, are to be guided in every respect by Reg IX. 1793, and such other regulations as have been or may be hereafter enacted for the guidance of magistrates, as far as the same may be applicable to the duties committed to them respectively. *Beng. and Ben. Reg. XIII. 1797, sect. 4.(a)*

760. But assistants are not, under the above provisions, to exercise the powers vested in the magistrates by sect. 19, Reg. IX. 1807. In the performance of any duties committed to them, they are not to exceed the powers vested in them by the regulations heretofore in force, except that, in the cases provided for by sect. 8, Reg. IX. 1793 (*Ced. Prov. sect. 8, Reg. VI. 1803*), wherein it may appear proper to impose the fine thereby authorized, in addition to 15 days' imprisonment, both the stated fine and the imprisonment may be adjudged, with an eventual commutation of the fine, if not paid, to further confinement for a period of 15 days, making the entire term of imprisonment, if the fine be not paid, one month of 30 days. In like manner, in charges of petty thefts, provided for by sect. 9, Reg. IX. 1793 (*Ced. Prov. sect. 9, Reg. VI. 1803*), they may, if it appear just and requisite, adjudge the one month's imprisonment in addition to the corporal punishment. In any case wherein the offence proved against the prisoner appears to require a more severe punishment than he is hereby authorized to adjudge, he is not to pass any sentence, but is to submit his proceedings to the magistrate, who, after holding any further proceedings he may deem necessary, if satisfied of the guilt of the prisoner, is to pass sentence on, or to commit or hold him to bail for trial before the sessions, according to the nature and circumstances of the case. Reg. IX. 1807, sect. 20.

SPECIAL POWERS.

Applications for increased powers to be made to government direct.

May be conferred on assistant qualified.

Not exceeding 6

761. Applications made to session judges by magistrates, with a view to their assistants being invested with special powers or the powers of a joint magistrate, are to be submitted by the session judges to the government direct. C. O. No. 11 of vol. 4. *L. P.*

762. When the nizamut adawlut are of opinion, either from a report of the magistrate or from other information, that an assistant is duly qualified by his experience, industry, and abilities, to be entrusted with special powers, they are to report to government. On the receipt of such report, or on other information, the government may invest such assistant with the special powers described below. Reg. III. 1821, sect. 2, cl. 1 and 2.

763. Assistants may be especially empowered, in all cases referred to them in which an individual may be convicted of any criminal offence punishable under Mahomedan law

(a) There appears to be no corresponding enactment for the Ceded Provinces.

and the regulations,—for which the penalties authorized above appear insufficient, and for which a more severe punishment than 6 months' imprisonment with thirty ratans, or a fine of two hundred rupees, has not been specifically prescribed,—to pass sentence of imprisonment not exceeding 6 months, with corporal punishment in cases in which corporal punishment is authorized by the regulations, or in other cases with a fine not exceeding 200 rupees commutable, if not paid, to a further period of imprisonment not exceeding 6 months, so that the entire period of imprisonment in no instance exceeds one year. Reg. III. 1821, sect. 2. cl. 3.

punishment or fine of 200 rupees commutable to additional 6 months.

764. If the offence proved against the prisoner appears to require a more severe punishment than the foregoing, he is not to pass any sentence, but is to submit his proceedings to the magistrate, who, after holding any further proceedings he may deem necessary, if satisfied of the guilt of the prisoner, is to pass sentence on, or to commit or hold him to bail for trial before the sessions, according to the nature and circumstances of the case. Reg. III. 1821, sect. 2, cl. 4.

ed. case to be submitted to magistrate.

765. An assistant is not competent to pass an order for commitment in cases wherein the offence appears to require a more severe punishment, than he is competent to adjudge; but he must submit his proceedings to the magistrate. Const. No. 191.

No power to make commitment;

766. An assistant is not competent to make commitments to the sessions, unless he has been appointed by government to act as magistrate: consequently an assistant directed to take charge of the office at the sudder station during the absence of the magistrate in the interior cannot exercise that power. Const. No. 686.

even when in charge of office.

767. An assistant is not competent to take cognizance of complaints against European British subjects to the extent specified in 53d Geo. III. cap. 155, sect. 105. The powers in question can be exercised only by a person possessing the full powers of magistrate. Const. No. 595.

Cannot take cog-

768. Upon the death, removal, or resignation, of any assistant invested with special powers, the person succeeding to the office of assistant is in no case entitled to exercise such special powers without the previous sanction of government; and it is at all times competent to government to revoke the special powers, entrusted to an assistant, for any cause which, in the opinion of government, may render the adoption of that measure expedient. Reg. III. 1821, sect. 2, cl. 7.

Special do not descend to successor; and government may revoke.

769. Assistants are to perform all such ministerial acts as may be prescribed to them by the magistrates, consistently with the regulations; but are in no cases to exercise judicial powers except in cases in which they are expressly authorized to exercise such powers by the regulations. *Beng. and Ben. Reg. IV. 1796, sect. 6. Ced. Prov. Reg. XII. 1803, sect. 16.*

Duties.

To perform ministerial acts prescribed by magistrate;

770. Magistrates are authorized to employ their assistants in the execution of such part of their prescribed duties as, from the extent of their general business, or other cause, they are unable to give due attention to themselves. *Beng. and Ben. Reg. XIII. 1797, sect. 2. Ced. Prov. Reg. XII. 1803, sect. 17.*

and such part of the duties, as magistrate may over.

Magistrate's order of reference to be recorded on his proceedings, with instructions.

771. Whenever a complaint or charge of a criminal nature is referred by a magistrate to his assistant for examination, under the foregoing provisions, the order of reference is to be recorded on the magistrate's proceedings with instructions, whether to submit the proceedings held upon the examination for the magistrate's decision, or whether the determination upon the charge is to be passed by the assistant, if it be such as he is authorized to determine under the regulations. As far as the general duties of the magistrates may admit, they are directed to examine the proceedings held by their assistants in such cases.(a) Reg. IX. 1807, sect. 21.

772. The same rule is applicable to cases referred to assistants vested with special powers. Reg. III. 1821, sect. 2, cl. 5.

Power in cases referred for decision, and report.

773. In cases referred to an assistant for trial and decision, he may acquit or convict according to his judgment. But in cases referred merely for report, he has no power to release the prisoners, but should submit his opinion in the required report to the magistrate, who will pass the proper order. Const. No. 612.

Magistrate may recall cases referred.

774. Magistrates are authorized at all times to recall from their assistants any depending cases, which may have been referred to them under the above provisions, and which for the more speedy administration of justice, or for any other reason, the magistrates may deem it proper to determine themselves in the first instance. Reg. III. 1821, sect. 2, cl. 6.

Government may empower assistants to take up cases without reference;

775. It is competent to the local government of each of the divisions of the Bengal presidency, to empower assistants to magistrates, and also deputy magistrates under Act XV. 1843, to exercise the powers of a covenanted assistant, to receive and try, without reference by the magistrate, all or any of such charges as they are now competent to try upon reference by the magistrate, subject to appeal from their decisions according to the provisions of sect. 2, Act XXXI. 1841. Act X. 1854, sect. 1.

but the magistrate has power to recall any such cases.

776. Magistrates, or joint magistrates, may at any time call from any of their assistants, or from any deputy magistrate subordinate to them, any case pending before any such assistant or any such deputy magistrate under the provisions of this Act, which for any reason the magistrate, or joint magistrate, may deem it proper to determine himself in the first instance. Act X. 1854, sect. 3.

the cold assistants employed exclusively on revenue duties in the interior of the district.

777. In answer to a suggestion of the board of revenue, that all magistrates should be instructed to make their tours in the interior of their districts only during the months of November and December, in order that assistants might be placed at the disposal of collectors for employment in the interior of their districts during the months of January, February and March,—the government replied that they concurred with the board in attaching great importance to the employment of assistants in revenue work in the interior of their districts during every part of the cold season when there is any such work to be done; and the board were authorized to employ assistants at that particular time of the year, whenever there is such work to be done, as though the whole of their time were at the disposal of the collector.

(a) For rules regarding the power of magistrate to revise the orders of his assistant, see chapter 5 of this book.

There is no necessity, it was said, for a rule restricting the tours of magistrates to two particular months. Magistrates should be considered in charge of their own offices, in whatever part of the district they may be. As regards the superintendence of the jail, which is the only duty a magistrate cannot personally perform when out in the district, he must make the same arrangements, when the assistant is employed in the district in settlement or other duties under the collector, as he would make if there happened to be, as is frequently the case, no assistant attached to his district at all. Govt. Orders No. 761, August 16, 1850 in C. O. S. B. R. No. 62, September 3, 1850. C. O. Sup. Pol. *L. P.* No. 12 of 1850.

778. While assistants are employed in the transaction of revenue duties in the interior of the district, there is no objection to their taking up criminal business connected with those parts of the district in which they may be employed, on the distinct understanding that the assistants shall only take up criminal cases so far as their revenue duties during the period in question may give them leisure, and so as not to interfere with the due discharge of the latter. When assistants have full powers, they might be instructed in special cases to receive petitions direct ; but in general it will be advisable for the magistrate to refer cases to the assistants with reference to the understanding noted above. C. O. Sup. Pol. *L. P.* No. 2 of 1854.

Such criminal work as they can take up without detriment to their revenue duties, may be made over to assistants so employed in the interior.

779. Magistrates are to require their assistants to pay frequent visits to the jail, in order that they may make themselves thoroughly acquainted with all existing rules regarding it. Particular attention should be paid to the discipline and classification of the prisoners ; the work on which they are employed ; their food and clothing ; the cleanliness and ventilation of the jail wards ; the checking of all abuses ; the conduct of the darogah and his subordinates ; and, in fact, all the details which form part of the internal economy and control of a jail. The assistant must invariably enter the result of his inspection in the visiting book of the jail, for the information and orders of the magistrate. Orders of Govt. in C. O. Insp. Jails No. 55, October 18, 1856. *L. P.*

Required to visit the jail frequently ; and to make themselves acquainted with all the jail rules.

780. Where head assistants to magistrates are appointed, it is sufficient to declare that they are to perform all acts which may be required of them by the magistrate ; and that they are in like manner to obey the joint magistrates, when the latter are acting independently. Government Resolution, November 1, 1831, para. 14.

Head assistants.

781. Session judges and magistrates are enjoined to report to the nizamat adawlut, whenever the ministerial officers attached to their courts, who are covenanted servants of the Company, are guilty of neglect or misconduct (other than corruption or extortion) in the discharge of their duty. *Beng. Reg. XIII. 1793, sect. 10. Ced. Prov. Reg. XII. 1803, sect. 13.*

Assistants guilty of neglect or misconduct.

782. In such cases the nizamat adawlut is to be guided by the same rules as in the case of magistrates guilty of neglect or misconduct ; see para. 699.

783. Every assistant, whatever be his powers, and every joint magistrate and deputy collector of the 2nd grade, if not in charge of a sub-division or of some independent office of

Applications for leave of absence.

higher rank, requiring leave of absence, is to write a letter addressed to the collector of his district, to be submitted first to the magistrate, who, if he sees no objection to a compliance with the application, will endorse the letter with a statement to that effect ; and, if otherwise, will briefly state on the letter his reasons for objecting to a compliance. The letter with the magistrate's remarks will then be forwarded by the magistrate to the collector, who will transmit it in original, similarly further endorsed by himself, to the commissioner. This latter officer will use his own discretion in forwarding the original application directly to the government for sanction, or in declining to do so. Govt. Order in C. O. Sup. Pol. *L. P.* No. 9 of 1850.

SECTION XIII.

OF THE FUNCTIONS OF THE DEPUTY MAGISTRATE.

Power to appoint.

784. It is competent to the local governments of both divisions of the Bengal presidency to appoint in any zillah or district one or more uncovenanted deputy magistrates with the powers hereinafter specified. Act XV. 1843, sect. 1.

Declaration to be made and subscribed.

785. Every person appointed to the office of deputy magistrate under this Act, previously to entering upon the execution of the duties of his office, is to make and subscribe before the magistrate of the district to which he is appointed, a declaration according to Act XXI. 1837. (a) Act XV. 1843, sect. 2.

May be employed as a judicial or police officer.

As judicial officer, powers ;

* See para 775.

and appeals from.

As a police officer, in all respects subordinate to magistrate.

786. A deputy magistrate, appointed under this Act, is capable of being employed as a judicial officer, or as an officer of police, or both, at the discretion of the local governments. As a judicial officer he is to exercise the powers of a covenanted assistant under Regulations XIII. 1797, IX. 1807, or III. 1821, or the full powers of a magistrate, according to such orders as may from time to time be issued in that respect by the local government ;* and in such cases he is subject to such authority in regard to appeals from his decisions and judicial orders, as is provided for the decisions and orders of a covenanted assistant under the above regulations, or of a magistrate respectively. As an officer of police he is in all respects subordinate to the magistrate under whom he is placed ; he is to exercise such powers as the government, or the magistrate with the sanction of government, commits to him ; and is to obey all orders that are issued, and perform all duties assigned to him by that functionary, who is at all times competent, subject to such orders as he receives from the local government, to extend, limit, or resume the the powers committed to such deputy. Act XV. 1843, sect. 3.

Commitments.

787. Officers invested with the full powers of magistrate are competent to make commitments to the sessions in cases referred to them, which are beyond their competency to decide. C. O. No. 173 of vol. 3.

(a) The purport of Act XXI. 1837, is to make it lawful for government to substitute a declaration for any oath required to be taken by law. The deputy magistrate must be required to make and subscribe a declaration to the same effect as the oath administered to covenanted assistants. See paras : 756 and 757.

788. Uncovenanted officers in the revenue and judicial departments may hold at the same time with any other office the office of deputy magistrate. Act XV. 1843, sect. 4.

Office may be held conjointly with

789. A deputy magistrate is not to be dismissed from office for misconduct without the sanction of the local government. Whenever there is reason to believe that a deputy magistrate is disqualified by neglect, incapacity, or corruption, for continuance in office, a report is to be submitted by the magistrate for the consideration and orders of government, which is competent to suspend him, and to order a further enquiry into his conduct, or to direct his immediate dismissal, as may appear just and proper. Act XV. 1843, sect. 5.

Dismissal.

790. Deputy magistrates in charge of sub-divisions are allowed a travelling allowance of three rupees per diem whilst moving about their jurisdiction. Those residing at sudder stations, and drawing an allowance of 200 rupees per mensem, are allowed five rupees a day when deputed to the interior on duty. C. O. Sup. Pol. *L. P.* No. 7 of 1847.

Travelling allowance.

791. Deputy magistrates, located upon full salaries in the mofussil, are expected to pay the expenses of cart-hire for conveying their tents, records, &c. out of their own allowances. Govt. to Sup. Pol. *L. P.*, No. 1184, June 3, 1846.

Cost of moving records, tents, &c.

SECTION XIV.

RULES FOR THE GUIDANCE OF DEPUTY MAGISTRATES AND ASSISTANTS IN CHARGE OF SUB-DIVISIONS.

By Government Orders, Bengal, February 18, 1846.

792. *Rule 1.* After assuming charge of their sub-divisions, deputy magistrates and assistants will hear and pass orders on all reports which may be submitted by the police, receiving petitions from the inhabitants within their jurisdiction, and deciding, or committing all cases brought before them, excepting such as the magistrates may think proper to call for and decide themselves. As the deputies and assistants will have been vested with the full powers of a magistrate, it is unnecessary to lay down any special rules for their guidance as judicial officers. It will be sufficient to enjoin upon them a strict adherence to the government regulations and the rules and orders of the court of nizamat adawlut and of the superintendent of police of the lower provinces.

If with full powers of magistrate.

Reports, petitions and cases.

793. *Rule 2.* As the great object of stationing officers in the interior of districts, is to relieve the inhabitants within their divisions from the delays and inconveniences to which they are now subject in their applications to station courts; and 2ndly, to secure a more effectual control, than has hitherto been possible, over the police employed in distant thanas, the deputies and assistants are particularly enjoined to avoid all unnecessary detention of parties in suits before them, to render themselves freely accessible to people of all classes, to listen to their communications with temper and consideration, and during the dry weather to be as much as possible upon the move, visiting the thanas under them, investigating serious

To avoid detention of parties, to make themselves accessible, and to move about the district;

and to take measures of police for the maintenance of good order in the district.

offences on the spot where they occur, acquiring every possible information, from every available source, as to the characters of the police officers and the landholders, or middlemen, of the sub-division, ferreting out receivers of stolen property and such parties as make a practice of harbouring robbers, and generally (after consultation, if necessary, with the magistrate) taking such measures as may appear most advisable for the suppression of crime and the maintenance of peace and good order.

On the occurrence of a heinous offence.

794. *Rule 3.* On the occurrence of any heinous offence, they will report the circumstances to the magistrate either in English, or in the vernacular, as they may find most convenient, and will keep that officer weekly informed of the progress and result of their proceedings for the apprehension and conviction of the parties concerned, paying due regard to any instructions which they may receive from him. The magistrate will forward copies of these reports to the superintendent of police lower provinces, with as little delay as possible.

In a case of violent or unnatural death.

795. *Rule 4.* In cases of murder, homicide, or unnatural death accompanied with suspicious circumstances; as also in cases of severe wounding; the corpse, or wounded person, will be forwarded by the police, as soon as the customary sooruthal has been recorded, to the officer in charge of the sub-division, should his station be in the direct line between the place where the investigation is going on and the sudder station of the magistrate. The deputy, or assistant, after inspecting the corpse, or wounded person, as the case may be, will lose no time in sending the same on to the sudder station for examination by the civil surgeon. But, should the deputy or assistant be absent from the subordinate station when the corpse or wounded person arrives there, or should his station be out of the direct line, the corpse, or wounded person, shall be forwarded on to the sudder station without awaiting the return of the above officer. The civil surgeon's report will be addressed to the officer in charge of the sub-division who, whenever such may be necessary, will request the magistrate at the sudder station to take the deposition of the medical officer and furnish him with a copy thereof, in order to enable him to judge as to the propriety of making further enquiries, and to assist him in drawing up the calendar of commitment.

If subordinate to two magistrates.

796. *Rule 5.* Deputies, subordinate to two or more magistrates, will use their own discretion, as to priority in the execution of orders simultaneously received from different superiors.

Correspondence
superior au-

797. *Rule 6.* The deputy magistrates will invariably correspond with the superior authorities through the magistrates to whom they are subordinate, except in cases of emergency, where delay would be mischievous, or highly inconvenient.

Statements.

798. *Rule 7.* The monthly statements of work disposed of and pending must be despatched by the deputy magistrates and assistants on or before the 5th of each month, and the yearly statements not later than the 10th of January. On each monthly statement the subordinate officers will make a note of the number of times, during the month, on which they have proceeded on duty into the interior, and the number of days they have on that account been absent from their stations.

799. *Rule 8.* Such parties as the deputies or assistants may sentence to simple imprisonment, not exceeding one month, will be retained in custody in the place set apart for such parties at the head quarters of the sub-division.

Disposal of
soners sentenced to
simple imprison-
ment for one
month ;

800. *Rule 9.* Prisoners whose sentences may exceed one month, together with all prisoners sentenced to hard labor, and prisoners committed to the sessions, should be forwarded to the sudder station under a guard of burkundazes, as often as may be practicable ; but never less seldom than once a week ; and care should be taken to transmit along with them their warrants and the calendars of commitment, together with such other papers as may be necessary. The term of imprisonment of prisoners sent to the sudder station will be calculated from the date of sentence.

exceeding one
month ; or for any
period with labor.

801. *Rule 10.* By the same opportunity the subordinate officers will remit such sums as they may have received on account of fines, deposits, sale of unclaimed property, &c. transmitting along with them copies of their weekly cash account, which must give clearly the different heads of receipts. Deposits on account of diet money of witnesses need not be remitted to the sudder station, the unexpended balances of the same being re-payable according to law, on the decision of each case, to the depositors.

Money received
as fines, deposits,
&c.

802. *Rule 11.* All refunds of fines, deposits, (with the above exception) &c., will be made from the magistrate's treasury, on receipt of a roobakaree from the deputy magistrates, or assistants, who are strictly prohibited from making any refunds themselves, or any disbursements, except such as may have been sanctioned by the magistrate, or the superior authorities.

Refunds.

803. *Rule 12.* The records of such cases, as may have been finally disposed of, should be forwarded to the magistrate's office on the 1st January of each year, arranged in bundles according to the thana and the nature of the offence, and accompanied by a clearly arranged catalogue.

Records to be
kept at sudder sta-
tion.

804. *Rule 13.* Should the deputy magistrates, or assistants, see reason to believe that any one of their amlah, or any darogah, mohurir, or jemadar, has been guilty of misconduct, or is otherwise incapacitated, so as to render necessary his removal from office, they will report the circumstances through the magistrate to the superintendent of police, and forward the papers of the case, together with their opinion, for final orders, suspending such officer on their own responsibility, should such a measure appear advisable.(a)

Dismissal of am-
lah, or police daro-
gah, mohurir, or
jemadar.

805. *Rule 14.* The dismissal of burkundazes, chokeedars, and goraitis, as also the appointment of burkundazes, and the confirmation of chokeedars and goraitis nominated by the zumeendars, rests entirely with the deputy magistrates or assistants, subject, of course, to an appeal in the case of the former to the superintendent of police, and in that of the latter to the magistrate. The assistants or deputies will, however, furnish the magistrate with a monthly statement of burkundazes, chokeedars, and goraitis, dismissed by them, specifying

Dismissal and ap-
pointment of
burkundazes,
chokeedars, and
goraitis.

Statement of
such.

(a) In case of dismissal the following particulars must be forwarded to the magistrate for report to the superintendent of police in accordance with his C. O. No. 10 of 1842, viz. 1. Name of dismissed officer ; 2. Name of his father, and place of birth ; 3. Office held by him ; 4. Cause of dismissal ; 5. Description of person, noticing peculiarities of speech, form, or feature ; 6. Remarks.

in each instance the nature of the offence. Should his offence be such as to render the re-employment of any burkundaz improper, the deputies or assistants will forward the papers through the magistrate to the superintendent of police, for the necessary orders.

Statement of police officers punished.

806. *Rule 15.* A similar statement of police officers punished by fine or suspension from office will accompany the above.

Circular orders.

807. *Rule 16.* The deputy magistrates, or assistants, will be careful to issue no "dustoor-ool-umul," or circular orders of a general nature to the police, without the approval of the magistrate and the superintendent of police.

Appointment of officers, thanadars and assistants.

808 *Rule 17.* On a vacancy occurring in the ministerial establishment, or in any of the higher grades of the police (thanadar, mohurir, or jemadar), the deputy magistrates, or assistants, will nominate the candidate whom they may think most capable, giving the preference on all occasions to subordinates, who may in any way have distinguished themselves. They will then take the deposition of their nominee in open catcherry, as to his residence, former employments with dates, fact of removal from any appointment with cause thereof, relationship or connection with any residents in the division, or with any of the amlah in the district offices. This statement the deputies, or assistants, will forward with their nomination in the ordinary form, for the approval of the magistrate and the superintendent of police.

REGISTERS AND BOOKS, ENGLISH AND VERNACULAR.

809. *Rule 18.* The deputies or assistants will keep in their office at all times ready for the magistrate's inspection, the following books and registers, in English and the vernacular, the headings of which are to be furnished to them from the magistrate's office.

of cases pending.
1 Appendix B, No. 7.
2 Ibid, No. 12, . 11.

*Register of hajut and bail cases pending.*¹ *Register of miscellaneous and burawurda ditto.*² *Register of Act IV. of 1840 cases ditto.*³ The deputies will take care, that the cases are entered in these on the day of their institution, and they will write the decision at the time of its delivery in their own hand.

of fines.
4 Appendix B, No. 29.

*Register of fines.*⁴ This they will keep open on their table, and will enter the fines, as they pronounce the order. They will take care that all fines are paid in their own presence, and will enter the receipt at the moment under the proper heading. In forwarding to the station prisoners, who may be sentenced to imprisonment with fine in lieu of labor, or in lieu of an additional term of imprisonment, the deputies will always send with them an abstract from the fine book, in order that these fines, which will then be payable at the sudder station, may be duly entered in the books of the magistrate's office.

Books of police officers' conduct.
5 Appendix B, . 7.
id, No. 20.

*Book of police officers' good conduct;*⁵ *and separate book of bad conduct.*⁶ In these books the deputies will note every occasion on which a police officer may distinguish himself; and every instance in which he may be fined, suspended, or reprimanded.

Daily account current.
7 r. Appendix B, No. 30.

*Book of daily receipts and disbursements.*⁷ This book must never be allowed to fall into arrears, and from this will be made out the weekly cash accounts for transmission to the magistrate.

of fir.

8 Appendix B, . 1.
id, No. 1.

*Register of persons who have eluded the pursuit of justice;*⁸ *and register of persons who have broken jail.*⁹ These books must be carefully kept, and measures should be taken by the deputies every now and then to ascertain whether the parties have returned to their houses,

or to what part of the country they have made their escape. Notice of the escape of these parties must always be given to the magistrate of the district, in order that the names of the fugitives may be entered in the books of his office.

Also a book of calendars of commitment.

And the following books and registers in the vernacular :

1 *Book of purwanas.*

1 *Ditto of summons and dustucks, &c.*

1 *Register of petitions.*¹

1 *Ditto of thana reports.*²

1 *Copy book of roobakarees.*

4 *Record-keeper's registers of cases according to Mr. Robinson's plan.*³

1 *Daily register of parties in attendance according to the orders of nizamat adawlut.*⁴

1 *Register of subsistence money deposited by parties to suits.*⁵

1 *Register of subsistence money paid to witnesses by government.*⁶ This money the deputies or assistants will invariably see paid in their own presence, and will send a detailed statement of sums paid to each witness, on account of government, to the magistrate monthly, i. e., on the 1st of each month, in order that it may be included in the contingent bills of the office. Occasional sums of money, not exceeding 100 rupees at a time, will be sent to the deputies by the magistrates, to enable them to make these disbursements, which, however, if the sudder court's orders for the prompt disposal of cases are properly acted up to, ought to be of rare occurrence.

*Two registers of unclaimed⁷ and lawaris property.*⁸ In these the deputies or assistants will include all property, which may be forwarded to their court, whether stolen, suspicious, unclaimed, or left by persons dying intestate. The latter kind of property will be forwarded weekly through the magistrate to the civil court.

*A register of chokeedars.*⁹ This register must be very carefully kept up—the removal of a chokeedar and the name of his successor being noted as soon after the order is given as possible. The deputies or assistants will take every opportunity also, on visiting their thanas, of assembling the chokeedars, and testing its correctness—weeding the force at the same time of all men, who may appear incapable of the active performance of their duties, and ascertaining that the whole have been regularly paid.

*Book of prisoners' rations.*¹⁰ The rations of the prisoners and persons under trial in hajut will be furnished, whenever practicable, by the jail moodee, who will keep an agent at the out-station for this purpose, and will receive payment from the magistrate's treasury on production of the deputy's vouchers, specifying the daily number of prisoners in confinement. These vouchers may be in the vernacular, but the deputies will superscribe them in their own handwriting with the number of prisoners, and will attach their initials thereto. On the 1st of each month they will forward a list in the vernacular of prisoners in confinement on each day of the month, for comparison with the vouchers.

At the same time, the deputies will furnish the magistrates with a memorandum in the vernacular, shewing the number of prisoners in confinement, or in transit, on the last day of

VERNACULAR.

¹ r. Appendix B, No. 4.

² Ibid, No. 5.

³ Ibid, No. 24.

⁴ Ibid, No. 13.

⁵ Ibid, No. 82.

⁶ Ibid, No. 31.

Registers of unclaimed and other property.

14.

⁸ Ibid, No. 15.

Register of chokeedars.

⁹ v. Appendix B, No. 19.

Book of prisoners' rations.

¹⁰ v. Appendix B, No. 33.

Memo: of present state of prisoners.

the preceding month, as also the number of escapes and deaths. These memoranda will be entered by the magistrates at the foot of their monthly statements of prisoners and casualties forwarded to government.

810. Strict attention must be paid to this last rule. When the officer in charge of a subdivision is subordinate to more than one magistrate, he is to furnish each magistrate with the memorandum required of the prisoners belonging to that jurisdiction. C. O. Govt. Bengal No. 1200, June 27, 1853.

If with special powers.

Reports and petty cases.

* See para. 775.

Heinous offences.

811. *Rule 19.* Officers exercising the above powers at out-stations, will hear and pass orders on all reports from the thana under them, and dispose of all cases occurring in their jurisdiction and within their competence to decide.* All cases of a heinous nature, such as murder, dacoity, aggravated burglary, or serious affray, must be immediately reported to the magistrate; but the subordinate officers will at the same time pass such orders, as may be necessary, and proceed themselves to the scene of the crime when practicable, for the purpose of carrying on the requisite inquiries, without waiting the magistrate's instructions. On receiving these latter, they will of course be guided accordingly.

Minor offences beyond their competence.

812. *Rule 20.* The subordinate officers will proceed to take evidence in all cases of felony, or misdemeanor, which, though beyond their competence to decide, may be unattended with aggravating circumstances; such as simple theft of property exceeding 50 rupees in value, simple burglary, and the like. Where the subordinate officers may consider the charge not proved, they will dismiss the parties, with the exception of defendants, whom they will retain on bail, until the receipt of the magistrate's orders for the discharge of the defendants, or for their transmission to be tried before him. Where the subordinate officers may consider the charges proved, they will at once forward the prisoner, together with the papers, to their superiors. The latter arrangement will also apply to prisoners triable under Act III. of 1844, who can only be sentenced to suffer corporal punishment by an officer exercising the powers of a magistrate.(a)

SECTION XV.

OF THE FUNCTIONS OF THE LAW OFFICER AND NATIVE JUDGES.

Magistrate may refer certain cases;

813. The magistrates are authorized to refer for trial to the Hindoo and Mahomedan law officers, all complaints or charges brought before them for petty offences, such as abusive language, calumny, inconsiderable assaults or affrays, and all charges of petty thefts, when unattended with any aggravating circumstances. Reg. III. 1821, sect. 3, cl. 1.

the same which they can refer to

814. Magistrates are competent to refer to the law officers any criminal cases, which they are authorized by former regulations to refer to their assistants; and in the mode of making the reference, and in the subsequent stages of the proceeding, the magistrates and

(a) These rules have been issued by the government of Bengal, and of course apply to assistants and deputies only in the lower provinces.

law officers are to be guided by the provisions hitherto in force relative to such cases. Reg. III. 1821, sect. 3, cl. 2.

815. The law officers, in the decision of criminal cases so referred to them, are authorized to exercise the same powers as those vested in the assistants to the magistrates by sect. 20, Reg. IX. 1807, and by the other regulations therein referred to; that is, they are not to sentence a person convicted of abusive language, or calumny, or inconsiderable assault or affray, to a more severe sentence than 15 days' imprisonment, and a fine of 50 rupees with an eventual commutation, if the fine be not paid, to further confinement for 15 days more, making the entire term of imprisonment, if the fine be not paid, one month of 30 days. Nor are they to sentence a person convicted of petty theft to a more severe sentence than [corporal punishment* and] imprisonment for a period of one month. Persons sentenced to imprisonment by the law officers are not to be confined in irons or in fetters, except in cases in which the misconduct of such individual, during his imprisonment, appears to the magistrate to render such measure necessary for his safe custody. Reg. III. 1821, sect. 3, cl. 3.

Powers in trivial cases;

and in cases of petty theft.

* See section of corporal punishment.

May not impose fetters;

816. In all cases of petty theft referred for trial to law officers, sudder ameens, and principal sudder ameens, it is competent to those officers to sentence persons convicted before them of that offence to labor in addition to the [corporal punishment* and] temporary imprisonment which they are authorized to adjudge. Reg. II. 1832, sect. 3.

but may sentence to labor in cases of theft.

* See : corporal punish-

817. The law officers are to forward to the magistrates, on the fifth day of each month, a statement showing the manner in which the cases referred to them may have been disposed of, in order that the same, after having been carefully inspected by the magistrates, with the view of noticing and eventually correcting any irregularities, may be incorporated in the periodical reports required to be submitted to the superior courts. Reg. III. 1821, sect. 3, cl. 4.

Monthly statements.

818. The foregoing provisions are applicable to sudder ameens.(a) Reg. III. 1821, sect. 4.

Sudder ameens.

819. The above rules are applicable to principal sudder ameens; and it is competent to the magistrate to refer to a sudder ameen, or principal sudder ameen, not being a Mahomedan law officer, any criminal case for investigation, though such case is not finally cognizable by such sudder ameen; provided however that no commitment be made by those officers, and that their power of awarding punishment in criminal matters, under the existing regulation, be not exceeded. Reg. V. 1831, sect. 18, cl. 6.

And principal sudder ameens.

Cases may be referred to them for report;

820. The above provision in no way affects the rules of Reg. III. 1821. The Mahomedan law officer has still the power of trying cases finally cognizable by him, which may be referred to him. C. O. No. 133 of vol. 2.

but not to a law officer, who can only try cases finally cognizable by himself;

821. The powers of the law officers are confined to the trial and decision of trivial cases; and cannot be construed as conveying to them authority to investigate and report upon any description of cases which they are not ultimately competent to decide. Should a case,

and should return more serious cases

(a) The application of these provisions is restricted in the text to sudder ameens vested with certain special powers under sect. 5, Reg. II. 1821; but all sudder ameens have now greater powers than those specified.

apparently trivial, turn out upon investigation to be of a serious nature, it would be necessary for the law officer, to whom it had been sent for trial and decision, to return it to the magistrate, unaccompanied however by any opinion as to the merits of the case. C. O. No. 30 of vol. 2; and Const. No. 516.

Cases which may ultimately be brought before the sessions should not be referred to law officer.

822. An injudicious employment of the Mahomedan law officers in trying criminal cases may involve the anomaly of the same individual being required to sit as an assessor in cases, in which he has already conducted the primary inquiry, and has consequently prejudged the subject to be decided. To avoid such incongruity a magistrate should make over to those officers such cases only, as may, on a cursory examination, appear to him not likely to be ultimately referred to the sessions court. C. O. No. 236 of vol. 2. *L. P.*

823. Where the evidence, on which the commitment was made, had been taken before the law officer, the court held that he should not have sat at the trial. Reports *L. P.* 1851, page 803.

Cases under Reg. VII. 1819 may be referred.

824. All cases under the provisions of Reg. VII. 1819, are referrible to principal sudder ameens for investigation and report. Const. No. 1265.

How such officers are to issue orders to police ;

825. In cases referred for investigation and decision to sudder ameens by the magistrate, they have no authority to issue purwanas to thanadars, darogahs, or other mofussil police officers ; when necessity exists they are to represent the matter to the magistrate who will issue the necessary orders. Const. No. 451.

and processes.

826. The processes of sudder ameens, in criminal cases referred to them, should be issued under their own signatures, but under the seal and through the officers of the magistrate. Const. No. 741.

SECTION XVI.

OF MOONSIFFS INVESTED WITH CRIMINAL POWERS IN THE LOWER PROVINCES.

First grade moon- were invested the powers of an assistant ; but not to exercise spe- re-

827. On the 24th April 1854 all first grade moonsiffs were made deputy magistrates with the ordinary powers of an assistant. But it was subsequently ordered that all moonsiffs whose cutcherries were situated at a location not identical with that of a magistrate or joint magistrate, or deputy magistrate, should abstain for the present from exercising criminal powers. This order however did not affect moonsiffs who had previously exercised such powers ; and the court were authorized to state that government would readily receive from the local officers any well considered suggestions, regarding the exercise of criminal powers, either by any particular moonsiff, or by moonsiffs generally in the interior. C. O. No. 6, June 9, 1854, *L. P.*

to be observed.

828. The following subsidiary orders, issued in C. O. No. 4, May 19, 1854, *L. P.*, are to be observed in the employment of the first grade moonsiffs, who have been vested with powers of an assistant to the magistrate under Reg. XIII. 1797, and Reg. IX. 1807 :—

829. *Rule 1.* Those moonsiffs, who are stationed at the head quarters of a magistrate, or officer exercising the full powers of a magistrate, either at a sudder station or at a subdivision, will only take up those cases which may be made over to them for trial by such officers. They will not exercise their power of taking petitions under Act X. of 1854, except in the absence of the magistrate, or officer exercising powers of a magistrate, and under express instructions from him.

Powers
station.

830. *Rule 2.* Those moonsiffs, whose cutcherries are situated at the same town or village as a police thana, will issue such orders, as may be necessary in connection with the cases under trial before them, to the local police officers, who are directed to obey them accordingly. The moonsiffs, as deputy magistrates, will be employed only in the adjudication of those petty cases, in which the police are prohibited to interfere, and it will therefore be only on rare occasions that they will be brought in contact with the police. No case of petty theft should be taken up by the moonsiff, except under express directions from the magistrate passed by that functionary on the report of the police officer. The moonsiffs will return to the petitioners any petitions involving charges of a more grave character than those which they are competent to adjudicate.

Powers when
stationed at the
same place as a
thana.

831. *Rule 3.* The moonsiffs, whose cutcherries are situated at the same town or village as a police thana, will make use of the thana lock-up room for the custody of those defendants under trial before them, who may be unable to furnish bail, or who may be charged with an offence not bailable. If a defendant, on conviction, is sentenced to imprisonment, either as the direct punishment of his offence or in commutation for a fine which he is unable to pay, he must be immediately forwarded to the *nearest jail* to undergo his sentence; but it is expected that the moonsiffs will, as much as possible, restrict their sentences to fines proportioned to the means of the defendants in the very trifling cases that will come before them.

In such case may
use thana as a lock-
up; but convicted
prisoners must be
sent to jail.

832. *Rule 4.* Those moonsiffs, whose cutcherries are situated at a location not identical with a police thana, will, for the present, abstain from the exercise of their criminal powers, until the judge and magistrate, in consultation, can report to the court whether it is desirable that the moonsiff's cutcherry should be removed to the site of the thana, or *vice versa*.

If not at location
of thana, not to act.

833. *Rule 5.* The moonsiffs will employ their own amlah, nazir, and peons, in the conduct of the criminal cases before them. Their processes will issue under their signature and the seal used by them in the civil department.

To use civil
court amlah.

834. *Rule 6.* They will be furnished with registers, printed forms, witness-attendance books, and stationery, from the magistrate's office.

Magistrate to
supply stationery.

835. *Rule 7.* They will submit their monthly statements direct to the magistrate of the district, forwarding at the same time the nuthees of cases which have been decided during the month;—or, where they are subject to the jurisdiction of two different magistrates, they will submit separate statements, &c., according to each jurisdiction.

Monthly state-
ments.

836. *Rule 8.* Moonsiffs, empowered to receive petitions of plaint, will, by the examination of the petitioner, endeavour to ascertain whether there is a *prima facie* case made out

Mode of proce-
dure.

against the party or parties charged ; he will then examine the witnesses named by the prosecutor, with the view to satisfy himself that the defendants should be summoned, and after hearing all that is urged by them and their witnesses, will dispose of the case.

If session case,
to forward record
at once.

837. *Rule 9.* In the course of an inquiry, should it appear that the result would probably involve a degree of punishment beyond that which the moonsiff is empowered to inflict, he will at once forward the whole record to the magistrate.

If case connect-
ed with others, to
report.

838. *Rule 10.* The moonsiffs are enjoined to be careful in inquiring whether the petty cases before them are in any way connected with other similar, or more serious charges, pending trial before any other criminal authority in the district. If such should be the fact, they will immediately suspend their own proceedings, and refer to the magistrate for his orders.

Not to exercise
police powers, but
to report irregulari-
ties.

839. *Rule 11.* The moonsiffs, though superior, as deputy magistrates, to the darogahs and all other police officers, are not to exercise any police powers, or to quit their cutcherries for the purpose of any local inquiry, or for the prevention of affrays or other crimes. They are expected to act in friendly communication with the police officers, but it will be their duty, in case of any gross neglect of duty or abuse of power on the part of the police, to report the circumstance to the magistrate for such orders as he may think requisite. They are strictly prohibited from imposing fines on any police officers or village chokeedars, except on charges under trial judicially before them.

Civil duties most
important.

840. *Rule 12.* The moonsiffs are cautioned that they are to consider their civil duties as their first and most important duty. It will not be accepted as a valid excuse for a deficient out-turn of civil work, that the moonsiff was engaged in criminal duties. If the number of criminal cases before a moonsiff is so large as to interfere with the discharge of his civil duties, he should at once report the circumstance to the magistrate, notifying the cases of which it is most expedient to relieve him.

If civil duties too
be ro-
ninal.

841. *Rule 13.* The court, on the representation of the judge, will at all times be prepared to recommend to government to suspend the exercise of criminal powers by a moonsiff, whose civil duties are sufficient to occupy the whole of his time. C. O. No. 4, May 19, 1854. *L. P.*

SECTION XVII.

OF THE FUNCTIONS OF THE CANTONMENT JOINT MAGISTRATE, AND POLICE IN CANTONMENTS.

842. The following rules are in force for the guidance of joint magistrates in charge of sudder bazars and police in military cantonments.

Division into
chokees.

Jemadar.

843. *Rule 1.* The cantonment will be divided into police divisions, and the head-quarters of each chokee will be established in a central and public situation. To each chokee a jemadar will be appointed, and all the chokeedars within the boundaries of the chokee will make their reports to him, and consider themselves under his orders.

844. *Rule 2.* These arrangements, when completed, should be published in station orders for general information.

845. *Rule 3.* On the 1st May of each year, the cantonment joint magistrate will furnish the superintendent with a nominal roll of all the establishments subordinate to him, arranged by chokees, and at the same time supply a detailed statement of his office establishment for the information of the civil auditor.

Annual roll of establishments.

846. *Rule 4.* The cantonment joint magistrate, on the 1st April in each year, will appoint five respectable and substantial householders as a panchayat for the whole cantonment, whose duty it will be to fix the rates of assessment to be levied from the native inhabitants of the several bazars, as well as from such persons as may occupy detached houses or buildings.

Panchayat to be appointed annually for assessment.

847. *Rule 5.* The panchayat will receive a sunnud of appointment under the signature of the joint magistrate, and will proceed under his orders to effect the annual assessment.

Sunnud for panchayat.

848. *Rule 6.* On receipt of the assessment roll, which will contain the names, caste, and profession of the inhabitants, and the amount of tax to be paid monthly by each, the cantonment joint magistrate will amend and adjust the rates of assessment as may appear just and proper, after duly considering any complaints respecting alleged unfairness of assessment, or excuses on the ground of inability to pay the amount assessed. Complaints of this nature will be received on unstamped paper.

Adjustment of rates.

849. *Rule 7.* When the rates of assessment have been finally adjusted, a fair copy of the assessment roll, written in Oordoo, shall be affixed at the most conspicuous and frequented places in the several divisions; a second copy will be similarly fixed at the police chokee; and the third, with an English copy, will be deposited in the cantonment joint magistrate's office, regularly paged; all being duly signed by the cantonment joint magistrate.

Assessment roll to be published.

850. *Rule 8.* The assessment will be regulated under the sanction of the superintendent of cantonment police with reference to the expenses of the police, and of the cleansing and repairing of roads, drains, bridges, &c., belonging to the several bazars inhabited by the parties assessed. The total sum is not to exceed the average rate of two annas per mensem from each proprietor or principal occupier of a shop or habitation.

Rules ing ditto.

851. *Rule 9.* For the purpose of realizing the amount of the assessments, and for the payment of the police, a respectable and intelligent native, who shall furnish security for rupees 1000, is to be selected and appointed by the cantonment joint magistrate, with the sanction of the superintendent. He will be called the sudder bukhshee, and will receive from the collections such fixed monthly salary, and allowance for stationery, &c., as may hereafter be determined by the superintendent.

852. *Rule 10.* On the 1st of each month the bukhshee will collect his quota from each assessed individual, and will sign the receipt presented by him; or, if the party is unable to write, the bukhshee will himself grant the receipt.

To collect from 1st of month.

853. *Rule 11.* On the last day of the month, he will furnish a list of defaulters to the cantonment joint magistrate, who will issue, upon its reverse side, a summons, with specifica-

Amount may
be recovered by
distress.

tion of the defaulters' names, requiring their appearance at his office. He will then examine into the merits of each case; and, in the event of its appearing that any arrears are due, will issue a written order to the bukhshree, to levy the same by process of distress, and public sale of such portion of the personal property (except working tools and implements of husbandry) as may suffice to make good the amount due: any overplus will be restored to the party.

Complaints against
bukhshee.

854. *Rule 12.* All complaints against the bukhshree for undue exaction, will be immediately enquired into by the cantonment joint magistrate.

Special rates.

855. *Rule 13.* In consequence of the increased protection afforded under these arrangements, the undermentioned special rates of chokeedaree tax are to be collected:

First. Merchants, superior shopkeepers, and extensive traders, at rupees 2 per mensem.

Second. Other householders occupying bungalows or large houses at rupees 2 per mensem and under, according to their circumstances, or the extent and description of the premises they occupy, at the discretion of the cantonment joint magistrate.

Third. Officers of Her Majesty's and the Hon'ble Company's army to be exempted.

Fourth. Military pensioners who do not carry on any trade to be also exempted.

Fifth. Pensioners, who carry on trade, will be rated at a tax not exceeding rupees 2 per mensem.

Sixth. Defaulters will be dealt with by the cantonment joint magistrate under rule 11.

Appeal from as-
sessment.

856. *Rule 14.* Parties dissatisfied may appeal to the commanding officer of the station; who will exercise, in such special cases, the same powers as are conveyed to the cantonment joint magistrate in rule 11. Such parties will be given to understand, that their residence in cantonments is conditional on their conforming to the rules in force.

Parades let out
for grazing.

857. *Rule 15.* Where it is deemed expedient, an income may be derived by farming the grazing of the several parades and practice grounds, under the orders of the commanding officer. The collections may in such cases be disbursed by the cantonment joint magistrate.

Monthly cash ac-
count.

858. *Rule 16.* The cantonment joint magistrate will transmit to the superintendent's office monthly cash accounts, (a) which are to include on one side all receipts under the dif-

(a) *Monthly Cash Account of Bazar Fund of the Cantonment Joint Magistrate's Office, Meerut, for the month of July*

				FINES, AS CANTONMENT JOINT MAGISTRATE.				Dr.			
185	1st,	To cash balance in hand of the bukhshree,...	0 0 0	1165 11 0	By amount forwarded to the Zillah Magistrate,	102 0 0					
		To FINES, AS CANTONMENT JOINT MAGISTRATE.			By PAY OF CHOKEEDAREE ESTABLISHMENT,						
					JULY 1851.						
4th,		Imam chokeedar, No. 2 chokee, for neglect of duty, fined, ...	2 0 0		No. 1—CHOKEE.						
12th,		Muthoo, Sookah, Dhunnoo, Teeka, Kunhal, and Rohim, for creating a disturbance, fined, ...	100 0 0	102 0 0	1 Jemadar, ...	16 0 0					
		To FINES, AS IN CHARGE OF BUDDER BAZAR.			1 Naib Jemadar, ...	6 0 0					
14th,		... To Shewdial, for writing false petition, fined, ...	0 14 6		1 Mohurir, ...	5 0 0					
23rd,		... To Juggoo, sala, for disobedience of orders, fined, ...	2 0 0		1 Duffadar, ...	5 0 0					
		... To Shadoo, mehtur, for disobedience of orders, fined, ...	2 0 0	4 14 6	24 Chokeedars, @ 4 Rs. each,	96 0 0					
		ARRERS.			No. 2—CHOKEE.						
		To chokeedaree collections for June 1851, ...	1450 4 6	1450 4 6	1 Jemadar, ...	16 0 0					
		To chokeedaree collections for July 1851, ...	1452 14 3	1452 14 3	1 Naib Bukhshee, ...	8 0 0					
		Carried forward, Co.'s Rs.,...	4175 12 3		1 Mohurir, ...	5 0 0					
					2 Naib Jemadars, @ 8 Rs. each,	16 0 0					
					2 Ditto ditto, @ 6 Rs. each,	12 0 0					
					2 Duffadars, @ 6 Rs. each,	12 0 0					
					2 Ditto, @ 5 Rs. each,	10 0 0					
					37 Chokeedars, @ 4 Rs. each,	148 0 0					
					Carried forward, Co.'s Rs.,...	227 0 0					
						457 0 0					

ferent heads of income, viz. chokeedaree tax, fines, or other customary income for the month ; and on the other side, disbursement, detailed under the head outlay, viz. pay of establishment, the rates of pay of the several classes being detailed ; the subsistence of prisoners, the number of men and days and the rate being stated ; expense of the funeral or removal of paupers to be stated separately ; next the contingent bills, according to numbers ; remittances to the collector's office : and lastly, the balance in cash, and inefficient balance ; this last showing every item in detail.

859. *Rule 17.* The cantonment joint magistrate will transmit to the superintendent

count. cash ac-

Monthly Cash Account of Bazar Fund of the Cantonment Joint Magistrate's Office, Meerut, for the month of July 1851.

CR.

Dr.

Brought forward, Co.'s Rs.,

4175 12 3

Brought forward, Co.'s Rs.,....

457 0 0

BY PAY OF CHOKEDAREE ESTABLISHMENT.
(Continued.)

No. 3—CHOKEE.

1 Jemadar,	10 0 0
1 Naib Jemadar,	0 0 0
1 Mohurir,	5 0 0
5 Duffadars, @ 5 Rs. each,	25 0 0
30 Chokeedars, @ 4 Rs. each,	120 0 0

172 0 0

BAZAR

1 Officer in charge,	32 0 0
ditto,	32 0 0
Writer,	25 0 0
1 Kotwal,	40 0 0
1 Choudhuree,	10 0 0
1 Mutasaddi,	7 0 0
1 Jemadar Peon,	8 0 0
1 Naib Jemadar Peon,	5 0 0
8 Peons, @ 4 Rs. each,	32 0 0
3 Weighmen, @ 3 Rs. each,	9 0 0

200 0 0

No. 4—CHOKEE

1 Bukhshee,	30 0 0
1 Jemadar,	8 0 0
5 Duffadars, @ Rs. 5-8 each.	27 8 0
1 Duffadar,	5 0 0
74 Chokeedars, @ 4 Rs. each,	296 0 0

308 8 0

508 8 0

No. 5—CHOKEE.

1 Jemadar,	16 0 0
1 Choudhuree, for supplying Chokeedars,	10 0 0
1 Mohurir,	5 0 0
1 Naib Jemadar,	0 0 0
1 Duffadar,	5 8 0
22 Chokeedars, @ 4 Rs. each,	88 0 0

130 8 0

No. 6—CHOKEE.

1 Duffadar,	0 0 0
9 Chokeedars, @ 4 Rs. each,	36 0 0

42 0 0

No. 7—CHOKEE.

1 Duffadar,	5 0 0
4 Chokeedars, @ 4 Rs. each,	16 0 0

21 0 0

CHARGES.

By Contingent Charges as per Bill No. 3, for July 1851,

84 0 0

IN DEPOSIT IN THE COLLECTOR'S TREASURY.

By amount deposited in the Collector's Treasury as per his receipt,

1770 7 6

Total, Co.'s Rs.

3243 7 6

By cash balance in hand of the Bukhshee, August 1st, 1851,

4 0 0

Grand Total, Co.'s Rs. ' ..

4175 12 3

Grand Total, Co.'s Rs

4175 12

In deposit in the Collector's Treasury, Co.'s Rs. 14180-11-0.

E. E.

Meerut Cantonment Joint Magistrate's Office,
The 185

A. B.,
Cantonment Joint Magistrate.

on the 1st May, in duplicate, an annual cash account,(a) for the information of government.

Sanction for dis-
bursements.

860. *Rule 18.* No disbursement, except for oil, stationery, subsistence of prisoners, and burial of paupers, to be made, without previous sanction; all others, including contingent

(a) *Annual Cash Account of Bazar Fund of the Cantonment Joint Magistrate's Office, Meerut, from May 1, 1850 to April 30, 1851.*
Cr. Dr.

1850. May 1st,	To Cash Balance on the 1st May 1850, ..	0 0 0	1268 12 9	BY FINES AS CANTONMENT JOINT MAGIS- TRATE FORWARDED TO THE ZILLAH MAGISTRATE.					
	TO CHOKEDARKE COLLECTIONS.			By May 1850,	..	24 0 0			
	To March 1850,	..	1415 15 0	" June "	..	64 0 0			
	" April "	..	1414 0 6	" July "	..	22 6 0			
	" May "	..	1419 12 3	" August "	..	68 0 0			
	" June "	..	1448 8 6	" September "	..	30 0 0			
	" July "	..	1421 1 3	" October "	..	4 0 0			
	" August "	..	1441 1 6	&c.			212 6 0		
	" September "	..	0 0 0	BY UNCLAIMED PROPERTY.					
	" October "	..	0 0 0	By May 1850,	..	0 10 4			
	&c.		8588 7 0	" June "	..	0 11 9			
	TO FINES AS CANTONMENT JOINT MAGISTRATE.			" July "	..	0 0 0			
	To May 1850,	..	24 0 0	" August "	..	2 9 0			
	" June "	..	64 0 0	" September "	..	0 0 0			
	" July "	..	22 6 0	" October "	..	5 3 6			
	" August "	..	68 0 0	&c.			9 3 4		
	" September "	..	30 0 0	BY PAY OF CHOKEDARKE ESTABLISH- MENT MARCH 1850.				221 9 4	
	" October "	..	4 0 0	No. 1—CHOKEE.					
	&c.		212 6 0	1 Jemadar,	..	16 0 0			
	TO UNCLAIMED PROPERTY.			1 Naib Jemadar,	..	6 0 0			
	To May 1850,	..	0 10 4	1 Mohurir,	..	5 0 0			
	" June "	..	0 11 9	1 Duffadar,	..	5 0 0			
	" July "	..	0 0 0	23 Chokedars @ 4 Rs. each,	..	92 0 0			
	" August "	..	2 9 9	1 Ditto,	..	3 10 0			
	" September "	..	0 0 0	Ditto for 5 months,	..	.....	127 10 0		
	" October "	..	5 3 0	No. 2—CHOKEE.			638 2 0		
	&c.		9 3 4	1 Jemadar,	..	16 0 0			
	TO FINES AS IN CHARGE OF SUDDER BAZAR.			1 Naib Bukhshee,	..	8 0 0			
	To May 1850,	..	0 0 0	1 Mohurir,	..	5 0 0			
	" June "	..	4 0 0	8 Naib Jemadars, @ 8 Rs. each,	..	24 0 0			
	" July "	..	0 0 0	1 Ditto,	..	6 0 0			
	" August "	..	0 0 0	8 Duffadars, @ 6 Rs. each,	..	18 0 0			
	" September "	..	2 0 0	1 Ditto,	..	5 0 0			
	" October "	..	0 0 0	36 Chokedars, @ 4 Rs. each,	..	144 0 0			
	&c.		6 0 0	1 Ditto,	..	3 1 0			
	TO AMOUNT WITHDRAWN FROM THE COLLECTOR OF MEERUT.			1 Ditto,	..	0 15 0			
	To May 1850,	..	0 0 0	Ditto, for 5 months,	..	.....	230 0 0		
	" June "	..	0 0 0	No. 3—CHOKEE.			1150 0 0		
	" July "	..	1528 2 0	1 Jemadar,	..	16 0 0			
	" August "	..	0 0 0	1 Naib Jemadar,	..	6 0 0			
	" September "	..	0 0 0	1 Mohurir,	..	5 0 0			
	" October "	..	0 0 0	5 Duffadars, @ 5 Rs. each,	..	25 0 0			
	&c.		1528 2 0	28 Chokedars, @ 4 Rs. each,	..	112 0 0			
				1 Ditto,	..	0 6 0			
				1 Ditto,	..	0 12 0			
				1 Ditto,	..	3 10 0			
				1 Ditto,	..	3 4 0			
				Ditto, for 5 months,	..	.....	172 0 0		
				SUDDER BAZAAR ESTABLISHMENT, AND No. 4—CHOKEE.			860 0 0		
				1 Bukhshee,	..	30 0 0			
				1 Jemadar,	..	8 0 0			
				8 Duffadars, @ 5-8 Rs. each,	..	33 0 0			
				74 Chokedars, @ 4 Rs. each,	..	296 0 0			
				Ditto, for 5 months,	..	.....	367 0 0		
				1 Officer in charge,	..	32 0 0	1835 0 0		
				1 Officiating ditto,	..	32 0 0			
				1 English Writer,	..	25 0 0			
				1 Kotwal,	..	40 0 0			
				1 Choudhuree,	..	10 0 0			
				1 Mutasaddi,	..	7 0 0			
				1 Jemadar,	..	8 0 0			
				Carried forward Co.'s Rs...		154 0 0	5381 10 0	221 9 4	
				Carried forward Co.'s Rs.					

Carried forward Co.'s Rs. 11610 15 1

charges under Rs. 100, to be forwarded, in duplicate, for the superintendent's sanction and countersignature, with a letter of explanation: if above Rs. 100, the sanction of government will be required: and in case of repairs, or improvements, estimates must be furnished.

861. *Rule 19.* All fines realized under the powers conveyed by rule 61 should be carried to the general fund; all those under the powers of the cantonment joint magistrate, should be sent to the magistrate of the zillah, for incorporation into his accounts, after the period for appeal has expired.

Fines how
of.

Annual Cash Account of Bazar Fund of the Cantonment Joint Magistrate's Office, Meerut, from May 1, 1850 to April 30, 1851.

CR.

DR.

Brought forward Co's Rs.	11610 15 1	Brought forward Co.'s Rs.	154 0 0	5381 10 0	221 9 4
BAZAR ESTABLISHMENT, AND No. 4—CHOKER.—(Contd.)					
1 Duffadar,	..	5 0 0			
8 Chaprasis, @ 4 Rs. each,	..	32 0 0			
8 Weighmen, at 3 Rs. each,	..	9 0 0			
			200 0 0		
No. 5—CHOKER.					
1 Jemadar,	..	16 0 0			
1 Choudhuree for supplying Chokeedars,	..	10 0 0			
1 Mohurir,	..	5 0 0			
1 Naib Jemadar,	..	6 0 0			
1 Duffadar,	..	5 8 0			
22 Chokeedars, at 4 Rs. each,	..	88 0 0			
			130 8 0		
Ditto, for 5 months,	..		652 8 0		
No. 6—CHOKER.					
1 Duffadar,	..	5 0 0			
9 Chokeedars, at 4 Rs. each,	..		41 0 0		
			205 0 0		
Ditto, for 5 months,	..				
DETACHMENT NO. 2 CHOKER ON THE B. GROUND.					
1 Duffadar,	..	6 0 0			
4 Chokeedars, at 4 Rs. each,	..		0 0		
Ditto, for 5 months,	..			6742 10 0	
CHARGES.					
By March 1850,			27 10 0		
" "			20 0 0		
" "			20 0 0		
" "			20 0 0		
" July "			91 5 0		
" August "			92 4 0		
" September "			0 0 0		
" October "			0 0 0		
				271 3 0	
DEPOSIT IN THE COLLECTOR'S TREASURY.					
June "			0 0 0		
" August "			0 0 0		
" September "			631 11 6		
" October "			615 4 9		
				2543 13 0	
By amount paid in full to Mr. James Smith for the 2 roads of the Sudder Bazar as per his receipt enclosed,				1528 2 0	
Total, Co.'s Rs.				11307 5 4	
By Cash Balance in hand April 30, 1851,					
Grand Total, Co.'s Rs.	1610 15 1	Grand Total, Co.'s Rs.		11610 15 1	

In deposit in the Collector's Treasury, Co.'s Rs. 13,419-3-6.

Intestate and un-
claimed property.

862. *Rule 20.* Estates of persons dying without heirs, and unclaimed property, must not be included in the general fund as available for local expenditure; but kept under a distinct head; and in the event of no claimant appearing within six months, the cantonment joint magistrate will make such property over to the magistrate of the zillah, to be dealt with according to law. Lists of unclaimed property to accompany the monthly and annual accounts.

863. *Rule 21.* In the event of a claim appearing within six months for the restoration of any intestate property, the application should be submitted to the superintendent, with a statement of the grounds on which such claim is founded, the amount, and the circumstances under which the estate or property was taken possession of.

Money to be re-
mitted to collector-
ate.

864. *Rule 22.* All receipts in excess of a sum equal to one month's pay of the establishment, must be forwarded as a deposit to the collector's treasury; and a memo: of the increase or decrease of the amount so at credit, is to be appended to the monthly and annual cash accounts.

Duplicate receipt
to be sent with an-
nual cash account;
copies of contingent
bills, &c.

865. *Rule 23.* Duplicate receipts for amount of fines, remitted to the magistrate of the zillah, should accompany the annual cash account. *Rule 24.* With the annual accounts must be submitted a copy of the contingent bills sanctioned by the superintendent; the receipts for all transfers of cash, or other disbursements; and copies of the letters sanctioning disbursements.

Police force.

866. *Rule 25.* The police will not be considered as belonging exclusively to any distinct chokee, but their services will be available whenever required, for any part of the cantonment.

Chokeedars to be
inspected.

867. *Rule 26.* Every chokeedar will be examined before appointment, and duly enrolled. They will be regularly inspected and paid every month, at the cantonment joint magistrate's office.

Promotion.

868. *Rule 27.* The chokeedars will be eligible for promotion, on approved service and due qualification, without reference to the chokee to which they are attached.

Jemadar respon-
sible.

869. *Rule 28.* The jemadar of each chokee will be held responsible for the protection of the whole of his chokee. He should take measures to prevent the harboring of people of notoriously bad character, or without ostensible means of subsistence. For this purpose, the jemadar will examine daily all empty bungalows and out-houses, and will require the duffadar and chokeedar to report when any such persons locate themselves in their jurisdiction.

Empty bunga-
ws, &c.

Theft during
night.

870. *Rule 29.* In cases of theft during the night, the jemadars will give an account of their proceedings in the roznamcha, specifying the rounds they went, the officers who accompanied them, and the chokeedar in whose beat the robbery occurred. The complainant should attend upon the cantonment joint magistrate. Any one of the police, from the jemadar downwards, found guilty of neglect, or connivance, will be immediately suspended; and the circumstance reported to the superintendent, for further orders.

Neglect or con-

tend.
to at-

871. *Rule 30.* The jemadars of chokees will attend daily on the cantonment joint magistrate, to make their reports, and to answer all inquiries when the roznamcha is being

read. If the cases be of importance, the questions and answers should be recorded in the margin, together with any orders issued at the time.

872. *Rule 31.* The roznamcha will be kept with minute care, every police occurrence during the preceding 24 hours being inserted in it. It will be regarded as the record and test of the efficiency and the regularity of the police in the discharge of their duties. *Rule 32.* Each roznamcha will be signed by the cantonment joint magistrate, and carefully filed in his office.

873. *Rule 33.* On the occurrence of a theft, it will be immediately made known by special messengers to the adjoining chokees, and the information thus spread into the district. This order will be carefully enforced, and thus intimations of robberies will be communicated with the least possible delay.

Intimation of theft to adjoining chokees.

874. *Rule 34.* One chokeedar of each chokee will make a round early every morning, to ascertain if any robbery has taken place during the night; should any have occurred, he will make an immediate verbal report to the cantonment joint magistrate at his residence, in order that he may proceed to the spot to make inquiries.

Thefts during night to be ascertained.

875. *Rule 35.* Residents and others should be encouraged to apply for chokeedars to the cantonment joint magistrate.

Residents to apply for chokeedars.

876. *Rule 36.* When the chokeedars come on duty at night, they should see that the padlocks on all godowns, shops, &c., are properly secured, and take notice that untenanted houses are not improperly occupied.

Chokeedars to see that shops, &c. are fastened;

877. *Rule 37.* Chokeedars should be stationed morning and evening at each of the great thoroughfares and cross-roads of the bazar. They will be subjected to dismissal, if found exacting or receiving any fees or perquisites from traders or hawkers, or from any party whatever. This rule extends to all fees or collections for naches at festivals, or any other plea whatever. No fee or tax is to be levied from prostitutes, who are on no account to be molested.

to be stationed in chief thoroughfares;

not to exact fees.

878. *Rule 38.* Any parties having in their possession goods or property, which the police have good reason to suspect as stolen, should be taken to the chokee for investigation.

Persons suspected of theft.

879. *Rule 39.* Upon the occurrence of any disturbance, the chokeedars will first endeavour to put a stop to it; and, if not able, they will take the offenders into custody.

Disturbance.

880. *Rule 40.* The chokeedars and other police establishments will be held responsible, that no gaming house, or unlicensed shop for the sale of liquor or drugs, exists in their particular beat or chokee. They will be careful to report the death of travellers, and persons dying without heirs, that their property may be duly taken care of; but the enquiry and report in such cases will be made by the jemadar only.

Gaming houses.

Unlicensed liquor shops.

Death of travellers &c.

881. *Rule 41.* On the occurrence of a robbery to which no clue is found, suspicious places, houses of ill fame, &c., should be searched, in the presence of respectable witnesses (bunyas if obtainable). This will, however, not be done without a parwanah, issued after depositions, or on reasonable grounds of suspicion. This duty shall not be entrusted to any

If no clue to robbery.

chokeedar, but shall invariably be performed by the jemadar, or, in his absence, by the duffadar.

Cleanliness of bazar.

882. *Rule 42.* Should any one disregard the regulations for the preservation of good order and cleanliness of the bazar, his name should be taken by the jemadar for the purpose of his being summoned to answer for the offence.

Discharge of police officer.

883. *Rule 43.* No officer of the police force is to be discharged without the previous sanction of the superintendent, except on conviction in a criminal proceeding, a copy of which will be submitted for the superintendent's approval. They may be suspended, and the circumstance reported for further orders.

Appointments to be reported.

884. *Rule 44.* All promotions and appointments above rupees 4 will be made by the superintendent of police, or under his orders. Leave of absence exceeding one month will be subject to the same rule.

Alarm of fire.

885. *Rule 45.* Whenever an alarm of fire is given, a few chokeedars from each chokee should be immediately sent to give assistance in suppressing the flames and saving the property.

Discharged police officer.

886. *Rule 46.* No discharged police officer should be allowed to remain in, or to visit, any chokee.

Police officers not to loiter in the office.

887. *Rule 47.* As soon as a case is concluded, the police officers concerned will immediately return to their chokee, and not remain loitering about the office.

Opinion of judge regarding dismissal of police.

888. *Rule 48.* All suggestions from the session judge, as to the dismissal or suspension of any police officer, arising from proceedings on trial held before him, are to be immediately attended to.

Fire-works.

889. *Rule 49.* All fire-works on the public roads are strictly prohibited.

Accidents.

890. *Rule 50.* In cases of accident, the police will endeavor to ascertain the name of the parties, and to take them into custody, if necessary.

not to
of offence.

891. *Rule 51.* The officers of the police will be particularly careful not to give any cause of offence, but to perform their duty with all possible moderation and forbearance.

Undue violence to be punished.

892. *Rule 52.* When it is necessary to take any person into custody, the police will be careful not to use more force than is absolutely required, and to disregard any intemperance and abuse. Any undue violence or abuse on the part of the police will be severely punished.

stol-

893. *Rule 53.* Recovered stolen property is, if possible, to be produced in the joint magistrate's office by the party before whom it was discovered. The previous transfer of such property from one hand to another is forbidden.

894. *Rule 54.* Prisoners will not be placed in the stocks, except during the night time; and then only in cases of felony, or of previous escape from custody, or when the notoriety of the prisoner's character, or his behaviour, may render that course necessary.

Vehicles passing.

895. *Rule 55.* Carriages, buggies, kranchies, and hackeries will keep to the left hand side of the road. When passing another vehicle, the driver must pass to the right of it, and

then only when the road affords sufficient room. The police will give the greatest publicity to this rule, by warning all owners, and drivers, in their respective divisions.

896. *Rule 56.* The whole body of the police must bear in mind, that they are the servants and not the masters of the public; that they are embodied for the protection of the well-behaved and orderly part of the community; and that exertion to repress the misconduct of the disorderly and dishonest is what is required of them. Oppression and violence on their part will be severely noticed, when exercised against unoffending individuals.

Oppression and violence on the part of police.

897. *Rule 57.* In addition to the special establishments for the regulation of the abkaree, the police force will also be answerable for the improper admission and sale of unlicensed liquor in their jurisdiction; and the jemadars and chokeedars will be held responsible if any clandestine sale takes place in their respective divisions, or wards.

Abkaree rules.

898. *Rule 58.* The cantonment joint magistrate, having the powers of joint magistrate in the district, will, in concert with the magistrate, take effective steps to prevent liquor being brought into the barracks from places beyond the limits of cantonments.

Introduction of liquor.

899. *Rule 59.* The licensed vendors of spirits and drugs should be bound by the conditions of their licenses not to harbour robbers, thieves, and riotous persons, or to receive any goods or wearing apparel in barter for liquor or drugs. They should also be bound not to open their shops during the night, and to give information to the nearest police officer of any suspected persons who may resort to their shops.

Rules for abkars.

900. *Rule 60.* As parties engaged in smuggling liquor within cantonments will resort to every device and false complaint, to deter the police from interfering with their illicit gains, the officer commanding will accord to the joint magistrate his cordial support, in the management of this department, without which all efforts will be much impeded, if not frustrated.

Commanding officer to assist in preventing smuggling.

901. *Rule 61.* In his capacity as officer in charge of the sudder bazar, he is authorized to investigate without oath such trivial offences as are usually punished summarily by commanding officers in the case of soldiers and camp followers. He is authorized to exercise this power by the imposition of small fines not exceeding two rupees, exposure in the stocks not exceeding four hours, or confinement in the bazar guard not exceeding 24 hours. Every shopkeeper is to be required to keep his shop clear of all rubbish in front, and parties committing nuisances, and causing obstruction in drains, will be subject to such penalties.

Sudder bazar.

Trivial offences.

Rubbish and nuisances.

902. *Rule 62.* A separate register will be kept of these cases, and of the awards; and this will be submitted monthly for the information of the officer commanding the station, and a copy submitted for the information of the superintendent of cantonment police. Any additional information must be afforded which the commanding officer may require, and such orders or suggestions, as he may deem necessary for the more sufficient control of the bazar, must be attended to.

Register of cases and awards.

903. *Rule 63.* The kotwal and all public bazar servants are to be nominated or removed by the superintendent of cantonment police, or under his orders by the officer in charge.

Public servants.

Excavations.

904. *Rule 64.* All excavations for earth, kunkur, &c., within the limits of cantonments, should be prevented, unless the sanction of the officer commanding, or other due authority has been priviously obtained.

Kotwal.

905. *Rule 65.* The kotwal of the sudder bazar will be ex-officio the head of the chokee in which his bazar is situated, on the salary he now receives from government, but he is not entitled to any allowance for stationery.

Crier.

906. *Rule 66.* It is the duty of the flag or weighman to make known by beat of tom-tom any order or information to be published.

Police officers
not to trade.

907. *Rule 67.* No kotwal, choudhuree, office-writer, or any other of the police or bazar establishment, is allowed to trade, or to engage in traffic, or to become indebted to any party within their jurisdiction. The kotwal, and the members of his family, should not be allowed to possess more than one house for a residence in the cantonment.

Procuring bun-
yas for corps
marching.

908. *Rule 68.* Upon requisition to afford assistance in procuring bunyas, or other tradespeople, to accompany any regiment under orders of march, the utmost endeavors will be used to meet such a demand; but the regulations of the service do not admit of any part of the sudder bazar being detached with corps moving for a common relief; nor can any individual be required to give his services with the condition of having to find his way back at his own expense.

Arbitrations.

909. *Rule 69.* Panchayats should be encouraged in every instance to assist the adjustment of pecuniary disputes, and their decision should be upheld, not only by the officer in charge, but by the authority of the commanding officer, except in instances in which corruption may be established against the arbitrating parties. Should such be the case, or either of the parties object to submit to arbitration, the affair must be settled under existing regulations and orders. *Rule 70.* A written agreement should be taken from each party to abide by the decision of the panchayat: this will be recorded, and unnecessary procrastination by either party will be prohibited. *Rule 71.* Disputes regarding knocking down, or building, walls or drains in the bazar, will be adjusted in the same manner.

Nuisances.

910. *Rule 72.* Acts constituting a nuisance will be treated in the same manner by the officer in charge, who will proceed to the spot, and take measures to abate the nuisance; such cases are on no account to be entrusted to the police or bazar establishment. *Rule 73.* A copy of the order in such cases will be given to the parties concerned, duly signed, but such order will be subject to an appeal to the officer commanding the station.

Mohurir not to
take payment for
copies.

911. *Rule 74.* It should be explained to all parties that they are not to pay the mohurir for the copy of any orders passed in their cases, and the mohurir should be warned against exacting such payment.

Quarterly com-
mittee report of
sudder bazar.

912. *Rule 75.* The usual quarterly committee report of the sudder bazar should be sent to the superintendent of cantonment police, and also, if required, to the deputy commissary general in the field.

Cleanliness of
drains.

913. *Rule 76.* In forwarding this return to the superintendent, the officer in charge will himself make a report on the state of cleanliness of the drains, &c., of the bazars generally.

914. *Rule 77.* He should, with the sanction of the officer commanding the station, and after due warning, cause the removal of all ruins and decayed houses, in any part of the cantonment, to prevent their misuse. Ruins and decayed houses.

915. *Rule 78.* The bills for his own salary, rupees 64, and that of the sudder bazar establishment, should be presented for payment to the local deputy pay master, and audited by the military auditor general, except at Meerut and Cawnpore, which are otherwise provided for: the portion of his salary as cantonment joint magistrate and superintendent of abkaree, together with office establishments, being drawn and audited in the civil department. Pay for establishment.

916. *Rule 79.* Where the amount of assessment admits of it, the pay of the jemadars of each chokee will be rupees 16 a month, a duffadar will be appointed at rupees 5, the pay of chokeedars should never exceed rupees 4. Rate of pay.

917. *Rule 80.* As the chokeedaree tax is the only source for the payment of the police establishment, the subsistence of prisoners, the funeral expenses and the removal of paupers, contingent charges sanctioned by the superintendent, and the repairs of roads, drains, bridges, &c., in the several bazars; care must be taken that the expenses above specified are not allowed to exceed the income. Expenses not to exceed income.

918. *Rule 81.* Whenever it may be necessary for the cantonment joint magistrate to quit the station, the previous sanction of the officer commanding the station must be invariably obtained, and a duly qualified officer appointed to perform the duty. Leave to quit station.

919. *Rule 82.* In applications for general leave, the letter should specify the name of an officer to be temporarily employed as a substitute, with the sanction of the officer commanding the station. Such application should be sent through the superintendent of cantonment police for the sanction of government. Substitute.

920. *Rule 83.* The accompanying form of police report(a) is to be filled up and transmitted to the superintendent's office in duplicate, on the 1st of January of each year, for the information of government. Police report.

(a) FORM OF POLICE REPORT.

FROM
TO
SIR,

I have the honor to forward the Police Report of the Cantonment of _____ for the year _____

2. *Abkarree Collections.*—From the annexed comparative statement of collections of Abkarree Revenue for the years 1846, 1847 and 1848, it appears that (here must be explained any particular cause for increase or diminution of the contract for the year reported on, and if all has been realized.)

1846—1847—1848.

3. *Abkarree Fines.*—(Here must be explained the cause for excess or diminution of smuggling, and any extraordinary cases mentioned.)

1846—1847—1848.

4. *Abkarree Reward.*—(The particular circumstances under which any general increase or decrease has taken place must be explained.)

1846—1847—1848.

	1846.	1847.	1848.
Apprehended,	0	0	0
Acquitted,	0	0	0
Convicted,	0	0	0
Total,	0	0	0

5. *Abkarree Cases.*—(The particular circumstances under which any general increase or decrease has taken place must be explained.)

	1846.	1847.	1848.
3 Jemadars,	0	0	0
8 Duffadars,	0	0	0
32 Chaprasis, ..	0	0	0
Total,	0	0	0

6. *Abkarree Establishment.*—(Any increase or diminution of this establishment must be explained.)

depart-

921. *Rule 84.* The first six paragraphs refer to the abkaree department. In each of these the cantonment joint magistrate will enter full explanations of the increase or diminution of revenue, smuggling, rewards, fines, punishments, and expense of establishment, comparing the present returns with those of the two previous years.

		1846.	1847.	1848.
<i>Murder,</i>		24	11	0
<i>Homicide,</i>		5	9	0
<i>Dacoity,</i>	With murder,	0	1	0
	With wounding,	0	1	0
	Simple,	0	0	0
<i>Highway Robbery,</i>	Attempts,	0	0	0
	With murder,	0	0	0
	With wounding,	0	5	0
	Above 50,	1	2	0
<i>Burglary,</i>	Above 10,	1	0	0
	Less than 10,	0	1	0
	With murder,	1	0	0
<i>Cattle Thefts,</i>	With wounding,	0	0	0
	Above 50,	34	11	0
	Above 10,	45	30	0
	Less than 10,	98	80	0
<i>Thefts,</i>	Attempts,	253	225	0
	With murder,	0	0	0
	With wounding,	0	0	0
	Above 50,	2	3	0
<i>Affrays,</i>	Above 10,	36	34	0
	Less than 10,	41	34	0
	With murder,	5	4	0
	With use of drugs,	4	3	0
<i>Miscellaneous Cases,</i>	With wounding,	1	3	0
	Above 50,	50	32	0
	Above 10,	71	60	0
	Less than 10,	430	586	0
<i>Total,</i>	With murder,	4	0	0
	With wounding,	0	1	0
	Simple,	0	0	0
	Miscellaneous Cases,	759	871	0
Total,		1848	1007	0
Total number concerned,		3299	3370	0
Total apprehended,		2388	2661	0

		1846.	1847.	1848.
<i>Remaining at the close of the year,</i>	Before Magistrate,	1	20	0
	Before Sessions Judge,	25	6	0
Brought to trial,		2414	2687	0
<i>Released,</i>	By Magistrate,	1464	1028	0
	By Session Judge,	38	43	0
Total acquitted or released,		1502	1071	0
<i>Punished,</i>	By Magistrate,	864	156	0
	By Session Judge,	22	10	0
Total,		886	166	0
<i>Remaining,</i>	Before Magistrate,	20	36	0
	Before Session Judge,	6	5	0
Total,		26	41	0
Value of property stolen, Company's Rupees		27091 0 4	6175 7 5	0
Ditto ditto recovered, Company's Rupees		10949 1 4	6171 8 0	0

922. *Rule 85.* The tabular statement and paras. 7 to 18, show fully the mode in which explanations of increase or decrease of crime are to be entered under their several heads; as also a detail of particular cases of importance, that the government may be able to judge of the efficiency of the cantonment joint magistrate, and of the establishment under him. Increase of crime.

923. *Rule 86.* The 19th and subsequent paras. are applicable to a cantonment police as at present constituted. Under the several heads, the cantonment joint magistrate will enter a full explanation of receipts, disbursements, and expenses of establishments, in compari- Police

7. From the foregoing comparative statement of crimes committed during the years 1846 and 1847, you will perceive that there is a considerable decrease in the crimes of murder, burglary, simple theft, cattle theft, and affrays, whilst on the other hand, there is an increase of six highway robberies, two dacoities, and four homicides.

8. The police have generally been very successful in apprehending criminals, and bringing the offences home to them. In the Appendix will be found a detail of each of the more heinous offences.

9. *Murder.*—Ten of these cases occurred in my jurisdiction, and one in the cantonments. In all ten cases the parties were taken up and convicted. In the cantonment case the murderer escaped, but was opposed in his retreat by a chokeedar, whom he mortally wounded.
1846, 24 cases—1847, 11 cases—1848, cases.

10. *Homicide.*—In eight cases, the parties were taken up. In seven, committed to the sessions court; but in three cases the sessions judge did not convict. In one case, the party was not apprehended.
1846, 5 cases—1847, 9 cases—1848, cases.

11. *Highway Robbery.*—In three cases, the parties were convicted, and a portion of the property recovered. In three others, several persons were apprehended and released for want of proof. Two cases, which occurred in the month of December, are still under investigation.
1846, 2 cases—1847, 8 cases—1848—.

12. *Dacoity.*—One of these was a case in which an attack was made on a boat anchored on our side of the Ganges, by a party from Oude. The property carried off consisted principally of brass lotahs, valued at 436 rupees. The Police followed the party in Oude, and, with the aid of the Oude police, captured a great many persons, eventually all but ten were released. These were committed to the sessions court and five convicted. The second case occurred on the 17th of December, and is still under investigation. The house of one Teluk Muhajun was attacked, his son killed, and property, principally money, to the amount of 2733 rupees, carried off. The principal parties concerned are all known, and have been apprehended, and several have confessed: so far as I can judge, the zameendar of the village planned the dacoity, and I am in great hopes of being able to convict him.
1846, 178 cases—1847, 121 cases—1848—.

Value of property stolen—1846, 1504-2-9
—1847, 440-7-0—1848—.

1846, 554 cases—1847, 448 cases—1848—.
1846, 11,921 Rs.—1847, 13,055 Rs.—1848—.

13. *Burglaries.*—There has been a decrease of 57 burglaries, and the amount of property carried off is less than one-third of that in the preceding year.

14. *Thefts.*—There is also a decrease in the number of thefts, but the value of property stolen rather exceeds that of the former year.

15. *Cattle Thefts.*—These have not increased; but the crime is still a very prevalent one.
1846, 79 cases—1847, 71 cases—1848—.

16. *Affray.*—There was one case only of simple affray, and 7 of the parties were convicted. That this occurred, was entirely owing to the remissness of the police. It took place in consequence of a dispute about possession between an auction purchaser and the old zameendar. A burkundaz had been deputed to the village to prevent any disturbance, and when shortly afterwards both the tahsildar and thanadar were informed that extra measures were necessary to prevent a fight, instead of acting at once they referred the matter to me for orders, and in the meantime the fight took place. Both of the officers had formerly always behaved well, and although I took the most serious notice of the offence, I was unwilling to proceed to the extreme penalty, dismissal, on account of their generally excellent character.

17. *Miscellaneous cases.*—This class of cases is on the increase; there is no doubt but the speed with which they are disposed of, induces the parties to bring them forward. Almost all these cases originate in petitions, which are taken daily. One result is, that affray is almost entirely suppressed. I should conceive that an increase of miscellaneous cases, and decrease of heinous offences, would show a general healthiness in the state of a police establishment, whilst the reverse would follow a contrary state of things.
1846, 759—1847, 845—1848—.

18. *Value of Property Stolen.*—(An explanation to be here entered as to any great difference in the respective years, and a report made on any particular cases of loss or recovery.)
1846—1847—1848—.

SUBJECTS RELATING TO THE CONDUCT OF CASES.

son with the two preceding years; and report generally on the efficiency or otherwise of any individual of the establishment requiring notice. *Rule 87.* A statement of the principles by which the system of assessment of the chokeedaree tax has been regulated, the changes in-

Chokeedaree tax.

19. *Police Establishment.*—Independent of the sudder bazar establishment allowed by government, consisting of bazar

	1846.	1847.	1848.
Jemadars,	0	0	0
Duffadars,	0	0	0
Bukhshee,	0	0	0
Mohurirs,	0	0	0
Chokeedars,	0	0	0
Total,	0	0	0

serjeant at 20 Rs., kotwal at 40 Rs., writer at 25 Rs., choudhuree at 10 Rs., mutasuddis at 7 Rs., jemadar at 8 Rs., naib jemadar at 5 Rs., eight chaprasis at 32 Rs., weighman at 9 Rs., the police establishment for the several bazars is as stated in the margin, and is paid from the chokeedaree tax.

	1846.	1847.	1848.
1 Moonshee,	0	0	0
1 Nazir,	0	0	0
1 Mohurir,	0	0	0
1 Izahar Nuvees,	0	0	0
4 Chaprasis,	0	0	0
1 Duffry,	0	0	0
Total,	0	0	0

20. *Office Establishment.*—The office establishment was increased to its present state by order of the Honorable the Lieutenant-Governor, North Western Provinces, No. 3846, dated 4th October 1847. (Any increase or diminution must be explained, and the authority given.)

	1846.	1847.	1848.
Chokeedaree tax, ..	0	0	0
Fines,	0	0	0
Singara tax,	0	0	0
Total,	0	0	0
Unclaimed Property,	0	0	0
Total,	0	0	0

21. *Bazar Fund.*—The bazar fund for the support of the police arising under the several heads noted in the margin, has been increased since the 1st October 1847 by an improved assessment, by which the number of houses taxed is —, and the number exempted is —.

The increase of the chokeedaree tax on the old arrangement is to be fully explained, when effected, and by whose authority.)

The particulars of any increase or diminution to

	1846.	1847.	1848.
Jemadars,	0	0	0
Duffadars,	0	0	0
Bukhshee,	0	0	0
Mohurirs,	0	0	0
Chokeedars,	0	0	0
Total,	0	0	0

of Police Establishment.—

(The detail expense of establishment should include each year under a distinct head all classes paid from bazar fund.)

	1846.	1847.	1848.
1 Moonshee,	0	0	0
1 Nazir,	0	0	0
1 Mohurir,	0	0	0
1 Izahar Nuvees,	0	0	0
Chaurasis,	0	0	0
1 Duffry,	0	0	0
Total,	0	0	0

23. *Expense of Office Establishment.*—(The expense of the office establishment must show any increase or diminution, and must be accounted for.)

24. *Balance of the Bazar Fund* —(The balance of the bazar fund must show any increase or diminution, and must be accounted for.)

25. *Contingent Charges.*—(The contingent charges should be stated so fully as to convey a general view of the purposes for which they were incurred.)

26. *Fires.*—(It must be enumerated how many fires have occurred during the last twelve months and the two preceding years; in what cases offenders have escaped, and in what have been captured.)

27. *Conduct of Police.*—(Here is to be noted the conduct of any of the establishment who may be deemed deserving of praise or censure.)

27. *General Remarks.*—In this paragraph will be entered any remarks or suggestions that the cantonment joint magistrate may think necessary to bring to the notice of higher authority, for the amendment or improvement of the police, or with a view to the better security of life and property within the cantonment.

Dec. 1846- Dec. 1847-

For 1846—. For 1847—. For

roduced, and a note of the number of houses included, that were formerly omitted, and of those exempted from poverty or other causes, are to be entered. *Rule 88.* A review and comparison of the former with the present system will be desirable, so that the government may be enabled to judge of the equity and general effect of the views now adopted. *Rule 89.* It is necessary that the cantonment joint magistrate should enter into a full explanation of the increase or decrease of the different items of revenue and expenditure, more particularly of the decrease, that the government may be made aware of its propriety. *Rule 90.* The document should be complete in itself, and should constitute an annual report on all the joint magistrate's proceedings.

Comparison of systems.

Explanation to be full,

and complete.

924. *Rule 91.* The cantonment joint magistrate will furnish the magistrate of the zillah with an annual statement, according to the several forms prescribed for magistrates, and which may be applicable to the office of a cantonment joint magistrate, to enable the former officer to compile his returns for the whole zillah. The joint magistrate will also transmit to the magistrate a comparative monthly table of criminal offences and property stolen, agreeably to the printed forms prescribed for that purpose.

Annual and monthly assessment

925. *Rule 92.* For the blank forms required for these returns, application must be made in due time.

Blank forms.

926. *Rule 93.* The cantonment joint magistrate will investigate the following cases and act in accordance to the regulations in each: 1st. Cases made over to him by the officer commanding the station, or by the commanding officer of a regiment at the station. 2nd. Cases of disputes, thefts, assaults, bribery, &c., preferred by or against cantonment residents and camp followers, Europeans or others, not being officers or soldiers, European or native, and regimental camp followers. 3rd. Heinous crimes committed in cantonments, except such as may be committed by soldiers, European or native.

Judicial cognizance.

927. *Rule 94.* The decisions of the cantonment joint magistrate in criminal cases are subjected to appeal before the session judge; and he must adhere to all orders and regulations that exist for the civil administration of justice. *Rule 95.* The session judge can exercise a full control over his judicial proceedings in criminal trials, whether in receiving appeals from sentences, or from miscellaneous orders; he may also interfere during the investigation of any case, and in special cases may call for an English report. This does not apply to decisions under rules 61 and 72, for which, in his capacity of officer in charge of the sudder bazar, he is responsible to the officer commanding the station. The magistrate of the zillah has the power to remove to his file any criminal trial that comes in ordinary course under the jurisdiction of the cantonment joint magistrate. *Rule 96.* Appeals against the cantonment joint magistrate's judicial or criminal proceedings or decisions in all cases lie exclusively to the session judge; or, within the Punjab, to the commissioner or deputy commissioner of the district, as the case may be.

Appeals.

Powers of session judge.

Appeals.

928. *Rule 97.* When the attendance of officers or soldiers may be required, the cantonment joint magistrate will apply to the commanding officer of the corps or detachment; but such application is not necessary in cases of camp followers, residents of bazars, or domestic servants.

Attendance of officers or soldiers.

Difference of opinion.

929. *Rule 98.* In cases of difference of opinion between the magistrate and the cantonment joint magistrate, as a reference to the superintendent of cantonment police might be inconvenient, the joint magistrate will be guided by the commissioner of the division; but he will report the result to the superintendent, should he deem it necessary.

Books.

930. *Rule 99.* If the abridgement of the regulations by Skipwith is not in his office, he should procure it with the least possible delay; also Beaufort's Digest of the Criminal Law.

What cases to be taken up first.

931. *Rule 100.* All cases occurring at night, more especially where parties have been apprehended, should be first examined, so that the attendance of innocent people and the police establishment may be dispensed with as soon as possible; postponed cases can then be entered on.

Investigation.

932. *Rule 101.* In cases of thefts by gentlemen's servants, or others, the case should be made over to the jemadar of the chokke, or other responsible officer, for investigation. Suspected parties should never be sent to the hawalat till a thorough investigation has taken place, and a report been made to the cantonment joint magistrate.

of property stolen.

933. *Rule 102.* An exact description of property stolen, and of any suspected person, should be, without delay, furnished to each jemadar and sent to the joint magistrate of the nearest cantonment.

Burglary.

934. *Rule 103.* All cases of burglary should be reported immediately to the cantonment joint magistrate, and he should without delay proceed to the spot.

Budmashes.

935. *Rule 104.* The officer in charge of the sudder bazar will be careful not to allow it to become a harbour for thieves, and persons without the ostensible means of subsistence.

Register of trials;

936. *Rule 105.* A register of trials in the accompanying form, (a) is to be transmitted

(a) *Monthly Register of Trials made by the Cantonment Joint Magistrate of*

for the month of August 1851.

Number.	Names of Plaintiffs.	Names of Defendants.	Crime and value of property stolen.	Value of property recovered.	Date of apprehension of the defendants.	Sentences and Dates.	Remarks.
1	Gunnesh,	Punchum, Girwar, Beharee, Dabee, Budla, Ungnoo, Immertee and Chingee,	For assault, - - - - -	- - - - -	6th August 1851,	The six former fined 2 rupees each, and the two latter 1 rupee each, or 15 days' each imprisonment in default of payment. 9th August 1851.	Released on paying the fine.
2	Private Jenkins, H. M. 70th Foot,	Shoobanee, - - - - -	For stealing cloth, valued at 1 rupee,	- - - - -	8th ditto, - -	Two years' imprisonment with labor. 25th August 1851.	An old offender.
3	Syfor, - - -	Nuzuf Ali and Bhan, - -	Nuzuf Ali for stealing jewels valued 5 Rs., and Bhan for purchasing the same knowing it to have been stolen,	- - - - -	7th ditto, - -	Six months' each, imprisonment with labor. 7th August 1851.	
4	Bhuttoo, - -	Seetul, Buctour, Khosal and Mata Bukhsh,	For assault, - - - - -	- - - - -	7th ditto, - -	The plaintiff filed a razeenamah in the case. 12th August 1851.	
5	Budloo Ram, -	Sonacollah, - - - - -	For assault, - - - - -	- - - - -	8th ditto, - -	Fined 10 Rs. or 15 days' imprisonment in default of payment. 9th August 1851.	Released on paying the fine.
6	Joorawar, - -	Jowahir, Septuland, Budloo,	For assault, - - - - -	- - - - -	8th ditto, - -	The former fined 10 Rs. or 15 days' imprisonment in default of payment, and the two latter released. The charge not proved against them. 15th August 1851.	Released on paying the fine.
7	Government, -	Seodeen, - - - - -	For breaking out of the hawalat, whilst a prisoner there,	- - - - -	9th ditto, - -	Six months' imprisonment, with labor. 14th August 1851.	
8	Sookheeah, -	Bhowanideen, - - -	For assault,	- - - - -	12th ditto, - -	The plaintiff filed a razeenamah in the case. 14th August 1851.	

monthly to the superintendent of police; and also of felonies committed in cantonments (b) and of against person or property by parties who have not been apprehended; so that the two registers will contain the total amount of crime within the month. A copy of the register submitted to the commanding officer under rule 75 should also be sent. *Rule 106.* In the column of remarks it should be stated, what steps have been taken in each case, to what native officer the investigation of the charge has been entrusted, and what information has been obtained likely to lead to detection, so that the merits of the jemadars, as well as of the several chokeedars, may be tested.

Outline of cases.

Monthly Register of Trials by the Cantonment Joint Magistrate of

for the month of August 1851. (Continued.)—

Number.	Names of Plaintiffs.	Names of Defendants.	Crime and value of property stolen.	Value of property recovered.	Date of apprehension of the defendants.	Sentences and Dates.	REMARKS.
9	Munsook, Hurree, Perahadee, and Kissorsree,	Chedee, - - - - -	For stealing cloth, valued Rs. 13-12,	Recovered 10 Rs.	12th ditto, - -	Six months' imprisonment with labor, and six months' additional imprisonment in lieu of corporal punishment. 12th August 1851.	
10	John Hughes,	Peer Bukhsh, - - - -	For adultery,	- - - - -	13th ditto, - -	Dismissed. The charge not proved against him. 13th August 1851.	
11	Abdoolah, -	Ruheem Ali, - - - -	For stealing property, valued Rs. 11-7,	Recovered 7 Rs.	22nd ditto, - -	Dismissed. The charge not proved against him. 22nd August 1851.	
12	Gopal, - - -	Joalla, Deveedeen, Gocoola, Heeralall, Chingee, Matadeen, Gunesh, Unguoo, Jees Lal, Heera, Mohun, Manooch, Tarn, Sham Lal, Deenah, Jhubhooah and Kalloo,	For assault, - - - - -	- - - - -	23rd ditto, - -	Joalla fined 8 Rs. Deveedeen, Gocoola and Heeralal at 4 Rs. each, and the latter 13 at 2 rupees or 15 days' imprisonment. 26th August 1851.	Released on paying the fine.
13	Government, -	Deenah, - - - - -	For murder, - - - - -	- - - - -	25th ditto, - -	Committed to the sessions court for trial. 29th August 1851.	
14	Gungoo, - -	Radha Kishen, - - - -	For assault, - - - - -	- - - - -	28th ditto, - -	Under trial.	
15	Gungadeen, -	Bukha and Bhujjah, - -	For abuse, - - - - -	- - - - -	29th ditto, - -	The plaintiff filed a razeenamah in the case. 29th August 1851.	

Cantonment Joint Magistrate's Office,
The 185 . }A. B.,
Cantonment Joint Magistrate.

(b) Monthly Register of Felony Cases in the Cantonment of , when the offenders have not been apprehended, during the month of August 1851.

Date.	Names of chokeedars in whose beat the offence took place.	Names of Plaintiffs.	Names of Defendants.	Crime and value of property stolen.	Value of property recovered.	What steps taken or information obtained.	Remarks.
24th Aug. 1851,	3	Gyadeen Bauri,	Mr. Littlefield,...	Unknown,...	For stealing property, valued 31 Rs.	... .. Investigated by Jhowlal, jemadar. No information obtained.	The property stolen from the verandah of the plaintiff's bungalow; but no one suspected. Chokeedar punished and turned out of cantonments for carelessness whilst on duty.
29th Ditto, ...	3	Ditto,	Capt. Brownlow, 1st Cavalry,	Ditto,...	For stealing property, valued Rs. 8-14.	... .. Investigated by Jhowlal, jemadar. No information obtained.	The property stolen from the cook-room. Chokeedars dismissed and turned out of cantonments for negligence.
30th Ditto, ...	3	Sheodeen Bauri,	Mundaree, mulah of Sutsee Chouhan,	Ditto,...	For stealing property, valued Rs. 225-8.	... .. Investigated by Jhowlal, jemadar. No information obtained.	The chokeedar suspected by the plaintiff, but no sufficient proof to convict him. Chokeedar turned out of cantonments.

Cantonment Joint Magistrate's Office,
The 185A. B.,
Cantonment Joint Magistrate.

Record of orders.

937. *Rule 107.* A book should be kept in the joint magistrate's office for the record of all orders that may be issued by authority connected with his department or duties, to which immediate reference can be made; also a vernacular one of all his orders to the police.

Registers.

938. *Rule 108.* The following registers should be kept up:—register of police:—ditto of chokeedars, public:—ditto of ditto, private:—ditto of residents:—ditto of officers' servants:—ditto of trivial offences.

Co-operation with magistrate.

939. *Rule 109.* A cordial communication and co-operation with the magistrate of the zillah are indispensable to the efficient working of these arrangements.

Commissariat.

940. *Rule 110.* The commissariat officers should be furnished with any return of carriage, cattle, grain, or other articles, which they may require; and on all occasions the most cordial assistance should be rendered in furtherance of the public service, so that the government and commissariat officers may feel no actual want of information, or diminution of resources, from the transfer of the sudder bazars from their charge. Any instance of inability to comply with any of their requests, should be reported to the superintendent. *Rule 111.* Previous enquiries as to the best mode of obtaining rahwaree camels, or other carriage, should be made so as to provide as well for the public services as for private parties. Rates should be equable, and as low as possible, so that neither the government, nor individuals, may suffer injustice. Upon this point a report of what is deemed practicable should be made to the superintendent.

Cordial assistance to be rendered to all persons in furtherance of the public service.

Camels and other carriage.

Weekly markets.

941. *Rule 112.* A report should be made to the superintendent as to the existence of weekly bazars or haths; and also as to whether the establishment of such markets in any place might be calculated to have a good effect in abating any monopoly of grain, &c., by arthis or others in the sudder or other bazars. This, however, can only be done with the sanction of the officer commanding; and no sort of tax should be levied on such markets.

To reduce prices by competition.

Rule 113. If by fostering competition the joint magistrate can induce a diminution of prices, the advantage that government must derive from it will be very great. Independent as he should be of the commissariat, he should bestow considerable attention on these subjects, recollecting that, after the purposes of government have been served, he is bound to give satisfaction to the public, both European and native, and that, unless this be rendered, his office can never be deemed efficiently served.

police.

942. *Rule 114.* Complaints against the bazar or police establishments should be preferred to the cantonment joint magistrate, or to the superintendent of cantonment police, for investigation.

Origin of fire.

943. *Rule 115.* In every instance of fire, the cantonment joint magistrate will make the most minute enquiries; and, if there is the slightest reason to suppose that it has arisen from incendiary attempts, he will take every lawful means for the apprehension of the offenders.

Box for petitions.

944. *Rule 116.* A box, for the reception of petitions, should be hung up in some public accessible place uncontrolled by any one on the police establishment, and the key kept by the joint magistrate. The petitions should be read, and orders given upon them, if possible, in the presence of the parties complaining.

945. *Rule 117.* The joint magistrate should use his best exertion to induce residents of the several bazars to retain hackeries for public hire, by affording them every protection, and ascertaining that they are properly paid. *Rule 118.* Whenever he provides hackeries, they should be paid half hire in advance, and furnished, on the completion of their arrangements, with the following certificate, to protect them from seizure. “————gariwan has engaged to proceed from————to————with—hackeries with———. His carts are to be released at———, and he will be entitled to a period of——days after discharge to return home; during which no one is to press his carts or molest him.” The same to be also written in Persian. *Rule 119.* In the event of the owner of the cart so employed having just grounds of complaint, the joint magistrate should bring it to the notice of the proper authorities.

Hackeries for public hire.

Certificate of gariwan.

Complaint of gariwan.

946. *Rule 120.* Commanding officers of corps will give every aid to the cantonment magistrate in carrying out these rules, with respect to the residents of the bazars of their respective corps. On entering cantonments, they will cause the magistrate to be furnished with a list of those registered as attached to their regimental bazars.

Commanding officers to give aid to cantonment joint magistrate.

SECTION XVIII.

OF THE SUPERINTENDENT OF POLICE IN THE CAMP OF THE GOVERNOR GENERAL.

947. As often as the governor general of India, or the commander-in-chief of all the forces in India, or the lieutenant governor of the North Western provinces, shall pass through any part of the territories of the East India Company attended by a camp, it shall be lawful for the governor general in council, or by an order in council, to appoint a superintendent of police of such camp. Act XXVI. 1836, sect. 1.

Appointment.

948. With respect to all offences committed in any such camp, or on the line of march between the stations of any such camp, such superintendent shall have concurrent criminal jurisdiction with the magistrate of the zillah or city, within which such offence shall have been committed. Act XXVI. 1836, sect. 2.

Jurisdiction.

949. As often as the said superintendent shall, by virtue of such powers, commit any person for trial before the sessions court, or sentence any person to imprisonment, it shall be lawful for him to transmit such person to the magistrate of the zillah or city, where the camp shall then be, with a copy of the commitment or sentence under his hand, and the magistrate shall give effect to such commitment or sentence. Act XXVI. 1836, sect. 3.

Prisoners committed or sentenced are to be sent to the magistrate.

950. All officers subordinate to the magistrate of the zillah or city, where such camp shall be, are to be assisting to the superintendent in the exercise of the powers conferred on him by this Act, in the same manner as they are bound to be assisting to the magistrate. Act XXVI. 1836, sect. 4.

All officers subordinate to ———— are to

Appeals from.

951. Appeals from decisions and orders of such superintendent are cognizable by a session judge, in the same manner and under the same restrictions as appeals from the decisions and orders of a magistrate, or other officer empowered to try criminal cases, are admissible. Const. No. 1370.

SECTION XIX.

OF THE FUNCTIONS OF A JUSTICE OF PEACE.

The governor general and the former were authorized to hold quarter sessions four times a year.

952. By stat. 13 Geo. III, c. 63, sect. 38, the governor general in council and the chief justice and other judges of the supreme court were respectively declared to be, and to have full power and authority to act as, justices of the peace for the settlement of Fort William and for the several settlements and factories subordinate thereto, and to do and transact all matters and things which to the office of a justice or justices of the peace do belong and appertain; and the governor general and council were authorized to hold quarter sessions four times in every year; the same to be at all times a court of record.

Governor general

953. The statutes 21 Geo. III, c. 65, and 33 Geo. III, c. 52, sect. 151, empowered the governor general in council to appoint covenanted servants of the Company or other British inhabitants, whom he might think properly qualified, to act as justices of the peace, within and the several presidencies and the provinces and places thereto subordinate respectively.

subordinate thereto;

but for the town of Calcutta any properly qualified resident of British India, who is not a foreign subject.

954. By stat. 2 and 3, Will. IV, c. 117, sect. 1, the governor general in council is authorized to nominate and appoint in the name of the Crown any persons resident within the territories in the possession and under the government of the East India Company, who are not the subjects of any foreign state, and whom he shall think properly qualified to act as justices of the peace within the town of Calcutta.

Appointments to be by commissions from the supreme court on a warrant from the governor general in council.

955. Such appointments are to be made by commissions to be from time to time issued under the seal of the supreme court of the presidency in the name of the Crown, and tested in the name of the chief justice; and the supreme court is authorized and required from time to time, upon an order or warrant from the governor general in council, to issue such commissions accordingly. Stat. 33 Geo. III, c. 52, sect. 151.

The supreme court on written requisition from government to supersede such commissions and issue new ones.

956. The supreme court, on any requisition in writing from the governor general in council, shall and may from time to time supersede such commissions; and, upon like requisition, issue new commissions for the purposes aforesaid unto the same, or such other of the covenanted servants of the East India Company or other British inhabitants, as shall from time to time be so nominated by the governor general in council. *Ibid.*

Such commissions to be filed in the court of oyer and terminer of the presidency.

957. All such commissions are to be filed on record in the respective courts of oyer and terminer of the province, presidency, or place, wherein and for which the same shall be issued. *Ibid.*

Supplementary commissions may be issued at any time.

958. The supreme court shall and may from time to time, upon the order or warrant of the executive government, issue separate commissions to any persons not named in the

general commission of the peace last issued, who by law are capable of being appointed to the office of justice of the peace, and who shall be nominated and appointed by such executive government to act as justices of the peace. All such commissions shall be issued in the name of the Queen's majesty, her heirs and successors, under the seal of the supreme court, and tested in the name of the chief justice of the said court, and shall be filed on record in the court of oyer and terminer, as supplementary to the general commission of the peace last issued, which shall remain in full force. Act VI. 1845.

959. The form of commission now issued to justices of the peace for the provinces of Bengal, Behar, and Orissa, and the presidency of Fort William, and the places subordinate thereto, is, as follows:—

Form of commission now issued to justices for Bengal, Behar, and Orissa, &c.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the faith, to our trusty and well-beloved A. B. C. D. &c., being respectively servants of the East India Company, and being all respectively British inhabitants of the presidency of Fort William in Bengal, or of the provinces, districts, and countries of Bengal, Behar, and Orissa, or of places subordinate to the said presidency of Fort William in Bengal, or of some or one of them, and not subjects of any foreign state, GREETING:—WHEREAS our trusty and well beloved the Right Honorable Charles John, Viscount Canning, Governor General of India in council, has, by virtue and in pursuance of the several Acts of Parliament, Acts of the Legislative Council of India, and Charters, in that behalf authorizing him, duly made his certain order or warrant, bearing date the eighteenth day of July in the year of our Lord one thousand eight hundred and fifty-six, and addressed to our chief justice and other our justices of the supreme court of judicature at Fort William in Bengal, for the issuing of a commission of the peace nominating and appointing you severally and respectively to act as our justices of the peace, to keep our peace within and for the said provinces, districts, or countries of Bengal, Behar, and Orissa, and within and for the said presidency of the Fort William in Bengal, and places thereto annexed, subject, or subordinate, according to all the powers and provisions of the Statutes, Charters, and Acts, now in force for the appointment of such justices of the peace, and the true meaning and construction thereof:—Now KNOW YE that we have accordingly assigned you and each and every of you to be our justices to keep our peace within and for the said provinces, districts, or countries of Bengal, Behar, and Orissa, and within and for the said presidency of Fort William in Bengal and places thereto annexed subject or subordinate, and to keep and cause to be kept all Statutes, Acts, Rules, Regulations, and laws, made for the good of our peace and for the conservation of the same, and for the quiet rule and government of our subjects and people in all and every the articles thereof, within the said provinces, districts, and countries of Bengal, Behar, and Orissa, and within and for the said presidency of Fort William in Bengal and places thereto annexed subject or subordinate according to the force form and effect of the same; and to chastise and punish all persons offending against the form of those Statutes, Acts, Rules, Regulations, or laws, or any of them, within the said provinces, districts, and countries of Bengal, Behar, and Orissa, and within and for the presidency of Fort William in Bengal and places thereto annexed subject or subordinate, as, according to the form of the Ordinances, Acts, Statutes, Rules,

Regulations, and laws, or any of them, shall be fit to be done; and to cause to come before you respectively all those persons who shall have used threats to any one or more of our subjects and people touching their bodies or persons, or the burning or firing of their houses, to find sufficient security for the peace or for their good behaviour towards us and our subjects and people; and, if they shall refuse to find such security, then to cause them to be kept safe in some or one of the prisons of the said provinces districts and countries of Bengal Behar and Orissa, or of the said presidency of Fort William in Bengal or places thereto annexed subject or subordinate, until they shall find such security: and further to do and cause to be done all other acts to the said office of a justice of the peace appertaining, which under and by virtue of the said Statutes, Acts, Rules, Regulations, and laws, now in force or which may hereafter be in force, or any or either of them, may lawfully be done by any justice of the peace within the said provinces districts and countries of Bengal Behar and Orissa, and the said presidency of Fort William in Bengal and places thereto annexed subject or subordinate: and therefore we command you, and each and every of you respectively, diligently to apply yourselves to the keeping of our peace, Statutes, Acts, Rules, Regulations, and laws, and the Acts of the governor general of India in council, and all and singular other premises, and to perform and fulfil the same in form aforesaid, doing therein that which to justice appertaineth according to the said laws, Statutes and Acts, saving to us the things to us in respect thereof belonging:—and we do hereby associate you with our justices of the peace, in and for our said provinces, districts, and countries, of Bengal, Behar, and Orissa, and the said presidency of Fort William in Bengal and places thereto annexed subject or subordinate, under any existing commissions or commission of the peace for the said provinces, districts, and countries, of Bengal, Behar, and Orissa, and the said presidency of Fort William in Bengal, and places thereto annexed subject or subordinate; which we hereby ratify confirm and continue, and direct you and them to be associated together and aiding each other in the discharge of the duties of such justices of the peace in and for the said provinces districts and countries of Bengal Behar and Orissa, and the said presidency of Fort William in Bengal and places thereto annexed subject or subordinate. Witness Sir James William Colvile, Knight, chief justice of our said court, the eighteenth day of August in the year of our Lord one thousand eight hundred and fifty-six, and in the twentieth year of our reign. (a)

Commissions
comprise all civil
officers.

960. Commissions of the peace have been issued from the supreme court, comprising the names of all the covenanted civil officers, military officers holding civil appointments, and deputy magistrates, employed under this government. C. O. No. 213 of vol. 3, and No. 51 of vol. 4. *L. P.*

Justices not
qualified to act un-
til duly sworn,

961. No person nominated and appointed in and by such commission was capable of acting as a justice of the peace in any of the said provinces or presidencies, until he had taken and subscribed in the court of oyer and terminer of the province or presidency for which he was appointed, the like oaths as were appointed to be taken by justices of the peace in Great

(a) This form of commission is, *mutatis mutandis*, identical with that issued to the justices for the town of Calcutta. But the commission of the peace issued to justices in England, wanting all the recitals contained in the Indian commissions, confers in addition on any two or more of the justices power to hold sessions, and to refer cases of difficulty to the Assizes. Such powers, as explained in the text, are not vested in Indian justices.

Britain, the oath of qualification prescribed by stat. 18, Geo. II., c. 20, relating to estate only and always excepted. 33 Geo. III. c. 52, sect. 152.

962. The necessary oaths were subsequently allowed to be taken and subscribed in any civil or criminal court of justice within the provinces, in and for which any such commission may have been issued, before any other justice of the peace: and such subscriptions were required to be deposited and kept with the records of such court of justice. 53 Geo. III., c. 155, sect. 12.

in some court of justice of the presidency,

963. All persons nominated and appointed in any commission of the peace are now capable of acting as justices of the peace in every respect, according to the tenor of such commission, upon taking and subscribing in any civil or criminal court of justice, within the places in and for which any such commission has issued, before the officer presiding in such court, whether such officer be a justice of the peace or not, the oaths† appointed to be taken by justices of the peace; and the subscription of such persons to the said oaths are to be deposited and kept with the records of the courts of justice in which the said oaths have been administered. Act XVI. 1841, sect. 1.

before the officer

† *v.* Appendix C. No. 7.

964. All persons appointed to the station of zillah or city magistrate are required to take the prescribed oath of qualification within six months from the date of their appointment: unless in any particular instance it should be necessary or convenient to defer the same to a later period, in which case the court of nizamat adawlut, on application being made to them, are authorized to grant such extension as they may judge proper, so that in no instance, without the sanction of the governor general in council in cases of emergency, the taking the oath shall be deferred beyond a twelve-month from the date of appointment of any zillah or city magistrate hereby required to take the same. Reg. II. 1796, sect. 4.

Justice must be sworn within six months,

except in peculiar cases.

965. The powers of justices of the peace are derived from the commission appointing them, and from the statutes by which in each particular instance special powers are conferred: and as that portion of their powers which relates to summary conviction (at the present day by far the most important portion) is clearly derogatory of the common law right of every man to be tried by his peers, it is not held to pass by anything short of express legislative enactment. The terms of the commission of the peace do not, either in England or in this country, confer any power of summary conviction, but extend rather to the prevention than to the punishment of a breach of the peace. Under them the powers of a justice are nearly identical with those of the ancient conservators of the peace; and he may demand bail, bind over to keep the peace, and adopt other precautionary measures, but cannot punish. There are however a number of statutes by which the powers of justices of the peace in England have been very largely extended, and so many of these as date previous to the year 1726, the 13th year of the reign of George I, and as are applicable to the circumstances of this country, may be acted upon both by the justices for the presidency of Fort William, and by those for the town of Calcutta. But subsequently to that date the statute law of England does not extend to this country, unless this country is expressly referred to in it: and with the exception of a few minor offences (the enactments regarding which are scarcely applicable to India) such as offences regarding the game and excise laws,

Powers of justice depend upon his commission and on the express enactments.

Commission conviction.

to Indian justices.

powers
conferred by ante-
cedent statutes few
and inapplicable to
India.

profane swearing, drunkenness, observance of the sabbath, and so on, all the powers of summary conviction which have been bestowed upon justices in England have been conferred subsequently to the year 1726, and have not been extended to this country. This fact appears to have been overlooked by the framer of stat. 9, Geo. IV. c. 74, which, while it confers on justices in India some of the powers then recently conferred on justices in England, wholly omits to invest them with the powers which had long previously been daily exercised by the latter class of officers.

Summary powers
vested by stat.
9, Geo. IV. c. 74.

966. The result is that the only powers of summary conviction possessed by a justice of the peace for Bengal, Behar, and Orissa, and the presidency of Fort William in Bengal, and the provinces and places annexed thereto—exclusive of those conferred recently by the Indian legislature—are those conferred by sections 75, 91, 92, 97, 113, 121, and 124, of stat. 9, Geo. IV. c. 74; other sections of which also contain provisions for the holding to bail or commitment of prisoners. These sections, as well as the Acts of the Indian legislature which confer powers of summary jurisdiction on justices of the peace, will be found in the chapter on European British subjects, over whom only the jurisdiction of a justice extends.

Powers of two
justices vested in
one.

967. All powers whatever in criminal cases, which may be exercised by two justices of the peace within and for the provinces, districts, and countries of Bengal, Behar, and Orissa, and within and for the presidency of Fort William in Bengal, and places thereto subordinate, may be exercised by one such justice. Act XXXII. 1838, sect. 1.

Powers of the
Calcutta justices.

968. It is only necessary to remark further that the powers of the justices for the town of Calcutta were specially extended by certain Rules, Regulations, and Ordinances, which were enumerated in and repealed by Act XIII. 1852, an Act which has been in itself repealed, (but not so as to revive the Rules, Regulations, and Ordinances above mentioned) by Act XIII. 1856. They are also clothed with all the powers with which Indian justices generally have been invested by either the Imperial or the Indian legislature; but no officer can exercise the powers conferred by Act XIII. 1856, who is not a police magistrate as well as a justice of the peace.

SECTION XX.

OF COMMITMENTS.

**Power to
commit.**

969. All officers invested with the full powers of magistrate, are competent to make commitments to the sessions in cases referred to them, which may be beyond their competency to decide. C. O. No. 173 of vol. 3.

Joint magistrate.

970. An order for commitment made by a joint magistrate, residing at the sudder station without independent authority, is not liable to reversal by the magistrate of the district: this can only be done by the session judge. All joint magistrates without independent jurisdiction are competent to make commitments, unless expressly interdicted by the magistrate (under rule 6 of the resolution of government, dated November 1st 1831);* and it is not competent to the magistrate to revise their commitments. Const. Nos. 906 and 911.

* r. para. 750.

971. It was ruled by government on the 7th July 1835 (under Act VII. 1835), How far
 that all session judges, or other officers exercising the powers of session judges, are competent to order a magistrate to commit any person or persons (connected with a trial pending before them), whom the magistrate has not thought fit, or objects to bring to trial. [C. O. No. 175 of vol. 2, and Const. No. 986.] But, after the passing of Act XXXI. 1841, it became a question how far the session judge is competent, under the terms of that law, to direct the apprehension, with a view to commitment for trial, of a person, the charge against whom has, either with or without the arrest of the party, been investigated and dismissed by the magistrate on the ground of the insufficiency of the proof against him, or from other cause; in cases which would, if proceeded with, be respectively within or beyond the magistrate's power to dispose of on trial by a final order. In cases of the former description, *viz.* those which the magistrate can decide of his own authority, it is agreed that the order of that officer for dismissal of the charge must be viewed as a legal acquittal; and cannot, in any view, be considered tangible by the sessions court. But as regards cases beyond the magistrate's competency to try, there is a difference of opinion; the Calcutta court decides that the sessions court has no power of interference; while the Western court allows such powers, but requires the session judges to exercise it with caution and discretion, and never to subject to commitment and trial, without good grounds, a person in such case released by the magistrate. C. O. No. 123 of vol. 3. *W. P. Reports* *W. P.* 1855, part 1, page 623. *Reports L. P.* 1852, part 1, pages 60 and 474; 1854, part 2, page 624; and 1856, part 1, page 953.

972. The session judge cannot direct the commitment of the accused person in such cases, whether the magistrate has released him on account of the insufficiency of the evidence, or from a disbelief in the truth of the charge. His power extends only to calling for fresh evidence in regard to prisoners on trial before himself; except in so far as he may direct a recommitment on a higher charge. A magistrate cannot *acquit* a defendant in a case, which is not within his legal competency to *decide*; but by cl. 2, sect. 2, Reg. VIII. 1830, he is authorized to release prisoners on his own judgment, if he thinks that, on all the evidence against them, there is not a reasonable probability of a legal conviction. A session judge has no authority like that of a public prosecutor, and no general superintendence over the proceedings of a magistrate; though he may of course intimate to the magistrate his opinion of the propriety of sifting all the evidence against a person not committed and of considering whether he should not be sent up for trial. *Reports L. P.* 1852, part 1, page 695.

whether the magistrate considers the evidence insufficient or disbelieves the charge.

Judge has no general power of superintendence over proceedings of magistrate.

973. A magistrate may not commit, for a second trial before the sessions court, any person already tried and acquitted on the same charge by a competent tribunal, whether the court of sessions or nizamat adawlut. But this does not preclude the magistrates from committing for trial before the sessions, in cases cognizable by that court, persons who have been before apprehended and discharged by a magistrate from want of evidence, if further evidence in support of the charge should appear to warrant the measure. C. O. No. 177 of vol. 1.

once

a
n
mitted on the same charge.

974. A prisoner tried before the sessions court for one offence and acquitted thereof, may be again committed by order of the court for another crime, of which from the evidence

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offence may be re-
committed on

another, which appears in the evidence on trial.

produced before the court he appears to have been guilty. Thus a prisoner was acquitted of being an accomplice in murder, but was directed to be brought to trial for having received part of the property of which the deceased was robbed. N. A. R. vol. 4, page 32. So, where the prisoners had been acquitted of the charge of receiving and feloniously retaining in their possession property obtained by embezzlement, and were afterwards committed for receiving property obtained by burglary. The plea of *autrefois acquit* cannot be upheld, unless the facts contained in the second indictment would have sustained the first indictment. Reports *L. P.* 1851, page 1601.

Witnesses on trial implicating themselves in the offence charged may be committed on such charge.

975. It appearing from the evidence of certain witnesses in the course of a trial before the court of circuit, that they were concerned in the act with which the prisoners stood charged, the court directed the judge of circuit to consider the proceedings on the trial held before him, and on which his reference was founded, as incomplete; and ordered a further investigation of the case at the ensuing sessions, the charge being drawn up as well against these witnesses as against the prisoners first indicted, to whom leave was given to make a supplementary defence. It was also ordered that if no evidence could be found against these fresh prisoners, except that furnished by their own depositions on oath, some of the least guilty among them were to be offered a free pardon, on the condition of their disclosing all the circumstances of the case, which might have come within their knowledge. N. A. R. vol. 2, page 14. (a)

Session judge and civil courts are empowered to commit in cases of perjury only. In other cases they can only forward the pro-

own judg-

976. Under special rules the session judge, and the civil courts, are empowered to commit persons chargeable with perjury or subornation of perjury, in cases instituted before them; but they have no power to commit persons charged with any other offence. In proceedings before them, if grounds appear to exist for bringing to a criminal trial persons accused of embezzlement,—or of forgery (sect. 2, Act I. 1848)—or presenting or filing a petition with the fraudulent intent of obtaining money already paid (Const. No. 925)—or of fraud (Const. No. 1225)—they should forward the proceedings to the magistrate, directing the government pleader to prosecute the case. The magistrate however, in committing or releasing the person charged with such offence, will act on his own judgment on a fair consideration of the evidence adduced. Const. Nos. 691, and 975. But it seems that such courts have no power to originate a prosecution in cases of misdemeanors, such as fraud and conspiracy, or other offences not declared to be unbailable.* The prosecution must be aggrieved party; but the courts may bring the circumstances to the notice

but such criminal must

*See paras. 338 and 344.

r. P.

Judge may not himself commit a moonsiff charged with corruption, &c.

977. In the case of a moonsiff charged with corruption, or other misdemeanor, the judge should confine himself to a preliminary enquiry, and should then, if he see fit, direct the government pleader to prefer a charge of corruption against the moonsiff before the magistrate. N. A. R. vol. 5, page 151. Const. No. 1069.

(a) Under sect. 32, Act II. 1855 no person can be subjected to arrest or prosecution on account of any answer, which as a witness he has been compelled to give after objecting to the question on the ground that the answer may tend to criminate him.

978. A magistrate, after he has committed a prisoner for trial, cannot legally quash the commitment, release one or more prisoners, and make him or them witnesses for the prosecution on the same trial. (a) Const. No. 857.

979. When the magistrate, in a case beyond his competency, has examined the complainant and witnesses for the prosecution (under sect. 5, Reg. IX. 1793), and has taken evidence on behalf of the accused (under cl. 1, sect. 2, Reg. VIII. 1830), with a view of affording him an opportunity of establishing his innocence before committing him, he is to discharge the accused, if he considers the accusation groundless; or to commit him to the sessions, if it appears that there are reasonable grounds for suspecting him to have been concerned in the perpetration of the offence charged. But a commitment should not be made on bare suspicion, where the evidence does not afford probable ground for conviction on trial; for, if conviction appear improbable, the commitment would not only be useless, and unnecessarily harassing to the accused and the witnesses, but also objectionable, as precluding conviction and punishment on evidence which might be subsequently obtained. Reg. IX. 1793, sect. 5. Reg. VIII. 1830, sect. 2. C. O. No. 54 of vol. 2, para. 13. See paras. supra 371 to 378.

Rules for making.

When to commit, and when not.

980. A magistrate is justified in releasing conditionally a prisoner, the evidence against whom does not justify a commitment; because in such a case he can be put on his trial at any future period, should further evidence render such a measure expedient; whereas, if committed and acquitted, he could not be tried a second time. N. A. R. vol. 6, page 43. If the charge be one beyond the competency of a magistrate, his order for the release of a prisoner has not the force of an acquittal.

Conditional release.

981. When a prisoner had evaded arrest until after the trial of his accomplices in the sessions court, it was held that the magistrate should have re-examined the witnesses for the prosecution, and confronted them with the prisoner before committing him. Reports *L. P.* 1854, part 1, page 365.

Witnesses whose evidence has been taken in the ab-

982. When the calendar is under preparation, the magistrate must consider the due weight and bearing of the evidence of each witness; and he should exclude from it all witnesses, whose evidence is not directly material to the proof of the crime charged. Reports *W. P.* 1853, part 2, page 1451.

Only those witnesses to be named in calendar, whose evidence is material.

983. When the prisoner after the commission of the crime charged absconded from the village and was apprehended lurking in the jungle, the court remarked that the magistrate should have sent up evidence to these facts. N. A. R. vol. 6, page 266.

But all evidence bearing on the guilt of the prisoners should be sent up.

984. The testimony of a single witness, if there be no apparent reason to discredit it, is sufficient for commitment.* But, at the same time, it is incumbent on a magistrate, previous

Evidence of a single witness sufficient.

* See para

(a) "The committing officer should not have power of his own authority to withdraw an indictment and cancel a commitment made by him; but if, after making a commitment and submitting an indictment to the sessions court, he obtains new evidence, with reference to which he thinks it proper to revise the indictment, it should be competent to him on such grounds to apply to the sessions court to return the indictment, in order that it may be revised and amended if necessary, and to remand the defendant to be present at the further examination intended; and the sessions court should have power to pass such orders accordingly." *Report of Law Commissioners, February 1, 1848, para. 76.* See rules *infra* for cancelling commitments.

to putting a prisoner on trial on solitary testimony of this description, to satisfy his own mind as to the credibility of the witness, by taking evidence to any points calculated to establish or disprove his testimony, by whomsoever such evidence may be indicated. C. O. No. 48 of vol. 2. Const. No. 634.

Not more than two witnesses to sooruthal required.

985. It is unnecessary to bind over more than two witnesses to a sooruthal to give evidence before the sessions ; it being always optional with the judge to summon the other individuals who may have witnessed it, in the event of his finding that their presence at the trial is indispensable. C. O. No. 49 of vol. 2.

Private prosecutor not requisite.

986. It is not requisite in order to authorize a commitment, that a complaint should have been made by a private prosecutor. N. A. R. vol. 1, page 277.

Prosecution to be in the name of government.

See the next section.

987. In all heinous cases, the magistrate in the *lower provinces* must make the government prosecutor or co-prosecutor ; but in the *western provinces* the prosecution must be in the name of government alone. C. O. No. 85 *L. P.* and No. 88 *W. P.* of vol. 4.

If regulation requiring commitment is previous to extension of magistrate's powers.

988. If the regulation requiring the commitment of a prisoner for a certain offence was passed antecedently to the extension of the magistrate's powers by sect. 19, Reg. IX. 1807 ; and if the magistrate deems the punishment, which he is thereby authorized to adjudge, to be adequate to the offence ; he is competent to dispose finally of the case without commitment. Const. No. 206.

Date of the crime charged.

989. When the death of a person is the result of, but occurs at a period subsequent to, an assault, the murder or homicide must be charged as having occurred on the day of the man's death, and not on the date of the assault. Reports *W. P.* 1856, part 1, page 274. It is most correct to insert both dates in the charge.

In cases of wounding, to wait for result ;

990. In cases of wounding, the commitment should not be made until the result of the wounds has been put beyond doubt, either by the recovery from danger, or by the death of the wounded person. Const. No. 558.

and when commitment unnecessary.

991. In cases of assault or affray attended with wounding, neither the mere circumstance of a bone-fracture, nor the nature of the instrument of offence, necessarily takes the case out of the cognizance of the magistrate, it being left to him to commit or punish as he judges most expedient, with reference to the extent of the injury, the apparent intent of the aggressor, and other considerations of a similar nature. C. O. Nos. 53, and 102 of vol. 3.

In cases of theft, the prosecutor's statement is sufficient to determine whether the case is committable. But not if the amount stolen is the sole reason for commitment.

992. In cases of theft, the declaration of the prosecutor on oath as to the value of the property taken must be considered sufficient to determine in the first instance the tribunal by which the case should be tried ; provided there is no reason to impugn the truth of it, on which point the magistrate is competent to make such enquiries as he thinks proper, and to proceed accordingly. Const. No. 1030. But in a case where the alleged value of the stolen property is the only reason for commitment, the magistrate is to put on record such proof as may show reasonable probability, that the loss sustained by the prosecutor really amounts to the sum specified and charged in the indictment. C. O. No. 8, Sept. 12, 1854. *L. P.*

Previous conviction of heinous offence in burglary or theft.

993. It is imperative on the magistrate to commit for burglary (under sect. 2, Reg. XII. 1818), a person previously convicted of cattle stealing ; but he is competent to punish (under

sect. 3 of that regulation) a prisoner convicted of cattle stealing who has been previously convicted of the same offence. Const. No. 1273. The chapters and sections of subsequent books, which treat of particular offences, contain the rules in each case under which commitment is sometimes necessary and is sometimes left to the discretion of the magistrate. Where no such specific rules have been laid down, commitment is requisite only in those cases, for which the law has enacted a measure of punishment beyond the general powers of a magistrate. But he is at liberty to commit any case, in which he considers that the prisoner is deserving of a more severe punishment, than that which he has power to inflict.

General rule
garding the ne-
cessity or ot
commitment.

994. A conviction cannot be had on a general charge of robbery. The indictment, must contain a distinct substantive offence, and without such specification it cannot be sustained. Thus a person cannot be committed on a charge of bad character. N. A. R. vol. 6, page 76. Reports *L. P.* 1851, page 1472. So no conviction can be had on a charge of fraud, or of oppression, without specification, simply because it is impossible for a prisoner to plead to, or make any defence against, so vague an accusation. Reports *L. P.* 1852, part 2, pages 449 and 603. And it is not sufficient to charge forgery, without specifying the particular documents on which the charge is laid. Reports *L. P.* 1855, part 2, page 8.

The charge in the
indictment must
contain a distinct
and substantive of-
fence:

and the
on which the
is laid, must be
distinctly specified.

995. On the same principle, where death has been caused by drugs administered with a view to procure abortion, the charge should contain a distinct averment of culpable homicide. Reports *W. P.* 1854, part 2, page 262.

The offence must
be charged as the
which it

996. A charge of "concealing the circumstances of the murder by sinking the body of the deceased in the river," was held to be incorrectly and insufficiently drawn. It should have been distinctly either for accessoryship in the murder after the fact or for privity. N. A. R. vol. 6, pages 141 and 346. So, a charge should be of culpable homicide and not of manslaughter, as the latter term is unknown in Indian law. Reports *L. P.* 1853, part 1, page 862.

Charge should be
distinctly laid in
proper legal phrase.

997. Where A committed an assault upon B; and B, having gone to complain, was on his return waylaid by C and D, and died from the effects of this second beating; and the magistrate committed C and D for culpable homicide, and A for assault; the court held that A should not have been committed with the others, as the acts were distinct. The charge of mere assault was punishable by the magistrate only; and could not, after the death of B from the effects of separate and subsequent violence by the two other prisoners, be prosecuted against A by B's heirs. Reports *L. P.* 1852, part 1, page 513.

Separate acts,
though against the
same person, should
not be joined to-
gether in one com-
mitment.

998. As forgery and the uttering of forged deeds are not cognate crimes with conspiracy, the latter offence should not form a count with the two former in the same calendar. Reports *L. P.* 1851, page 1666.

All charges em-
braced in one com-
mitment should be
of cognate crimes.

999. A prisoner under commitment on a charge of wilful murder effected his escape. His commitment (on re-apprehension) on an additional charge of escaping from jail whilst awaiting his trial at the sessions, which was an act not arising out of the same circumstances as the original count, and one in which commitment was not necessary, was annulled. N. A. R. vol. 6, page 75.

Additional count

ag-
the
other.

1000. When the crime of the prisoner involves acts, the one of which is in aggravation of the other, as where he has committed murder in prosecution of theft, they should not be divided into separate counts ; but should be charged together in one count. Reports *W. P.* 1854, part 1, page 3. And both must be distinctly averred in the charge. *N. A. R.* vol. 6, page 138. The safest course is to add a separate count for each act on which the charge is laid ; as *e. g.* one for the theft with murder, a second for the murder, and a third for the theft. See Rule 19 of magistrate's statements, in appendix E.

When a person committed to the sessions is also proved guilty before the magistrate of a separate and distinct offence within his competence, he may either punish or commit in the *Lower Provinces* ; in the *Western Provinces* he must commit.

1001. Where a magistrate convicted and sentenced a person whose trial in another case was still pending before the sessions court, the nizamat adawlut held that there was nothing illegal in such sentence, as the charge on which the prisoner had been committed to the sessions was not identical with, or related to, the same act as the charges on which he was punished by the magistrate ; although the latter might, in his discretion, have committed him to take his trial at the sessions on all the charges against him. Letter of *N. A.* to Judge of Rajshahye, No. 888, August 2, 1853. But it seems that in the *Western Provinces* there is a different practice ; and that a magistrate is there interdicted from passing sentence on persons who are under commitment to the sessions for a separate offence. Each separate offence must be made the subject of a separate trial, but all the trials must be held before the same court. Reports *W. P.* 1852, part 1, page 521.

But if two against one originated same transaction he should be committed on both.

1002. When a magistrate, holding an investigation on a charge of embezzlement, saw that it likewise involved one of forgery, the court held that, instead of at once disposing of the charge of embezzlement with which he was competent to deal, he should either have suspended his proceedings in the case and committed the accused upon the charge of forgery to the sessions court and awaited the result of that trial ; or he should have adopted the more preferable course of committing the prisoner for trial on the two charges of forgery and embezzlement before the session judge, so that one tribunal might pronounce upon both. Letter of *N. A.* to Judge of 24-Pergunnahs, No. 378, April 14, 1853.

Witnesses for the defence of a prisoner before a magistrate may be ordered by the convicted one, so, still pending.

1003. A commitment for perjury is not illegal, though made pending an appeal from the conviction which followed on a disbelief of the evidence of those witnesses who have, in the opinion of the magistrate, been guilty of perjury. With a view however to avoid conflicting decisions, it is advisable to postpone the trial for perjury until the appealed case has been disposed of, as the question of the innocence or guilt of the prisoners in regard to the alleged perjury must rest on the truth or falsehood of the original charge. Letter of *N. A.* to Judge of Rajshahye No. 641, June 11, 1853. *N. A. R.* vol. 1, page 263.

of those is committed, all must be.

1004. When the commitment of one of the prisoners is requisite under the regulations, all the other prisoners implicated in the same offence must likewise be committed, although the case as regards them is cognizable by the magistrate. Const. Nos. 379, and 622. *N. A. R.* vol. 2, page 396.

If prisoners, who might be sentenced by the magistrate, are committed because others implicated in the same case must be com-

1005. When a prisoner is committed, because the commitment of another prisoner implicated in the same offence is requisite under the regulations, the circumstance necessitating commitment must be noted in the roobakaree of commitment ; and the session judge should be careful that it is so recorded, because, when but for the commitment of his accomplices the

magistrate would have sentenced a prisoner, the judge should refrain from awarding to him a greater measure of punishment than the magistrate has authority to impose for offences of the kind. The judge also must himself show in his remarks under what circumstances the sentence recorded has been adjudged. C. O. No. 234 of vol. 3. *L. P.*

1006. Great care is requisite in drawing up the charges on which prisoners are committed, because a prisoner cannot be convicted of any crime, to the distinct averment of which he has not pleaded, although the facts proved on trial be sufficient to establish a charge of that nature. See paras. 1214 *et seq.*

1007. Where there is any doubt as to whether the accused is guilty of a higher or lower grade of an offence of the same character, the commitment should be made for the higher grade; thus, if it be doubtful, from the evidence before a magistrate, whether the offence amounts to murder, or only to culpable homicide, the commitment should be for murder: and the reason of this is that a conviction of a minor offence may be had on a commitment for a graver offence of the same character, and founded on the same facts; but that the converse of the proposition does not hold good. On the other hand where a doubt exists as to whether a commitment should be made for knowingly receiving plundered property, or for the actual robbery, the prisoner should be committed on both counts; because here the acts are distinct and of a separate character. C. O. No. 54 of vol. 2, paras. 16, and 17. N. A. R. vol. 1, page 257; and vol. 3, page 56. And in all cases wherein stolen or plundered property has been found in the possession of prisoners committed for theft or robbery, a second count should be inserted in the commitment, charging them also with the offence of knowingly receiving the plundered or stolen property, as the case may be. C. O. No. 98 of vol. 2.

1008. But the commitment should not be made for the greater when there is proof of the lesser crime only. Letter of N. A. to Judge of Rajshahye, No. 2, February 10, 1840.

1009. It is superfluous to insert separate counts, the one charging the prisoners with being accomplices, and the other with aiding and abetting, as the meaning of both is the same. N. A. R. vol. 6, page 320. So, when a prisoner is charged as a principal, it is superfluous to charge him also as an accomplice, because accompliceship is comprehended in the principal charge. C. O. No. 109 *L. P.* and No. 110 *W. P.* of vol. 4.

1010. But when a prisoner is committed as a principal or an accomplice only, he cannot be convicted of being an accessory before or after the fact, because accessoryship is a crime of a distinct and specific character. In such case the judge should return the calendar for amendment; but if he acquits the prisoner on that account alone, the magistrate may re-commit him as an accessory. Reports *L. P.* 1853, part 2, page 25. Reports *W. P.* 1856, part 1, page 393. This over-rules what is laid down in Const. No. 123, and N. A. R. vol. 1, page 247, regarding accessories.

1011. So also, a prisoner cannot be convicted as an accomplice on a charge of being an accessory before the fact; nor can he be convicted of being an accessory before the fact on evidence, which shows him to have been guilty, not of that offence, but of an offence of a higher grade and a different character. Reports *W. P.* 1855, part 2, page 363. A convic-

And a charge of privy must be also distinct. tion as an accomplice or an accessory cannot be had on a charge of privy. Reports *W. P.* 1856, part 1, page 293.

offences of character argued

1012. On the same principle, averments of forgery and of uttering forged documents should be charged in separate counts, as the one offence is of a character distinct from that of the other. Reports *L. P.* 1855, part 2, page 8.

Magistrate cannot punish the accessory and commit the principal ;

1013. The magistrate cannot punish the accessory and commit the principal ; in all possible cases they should be tried together, if it be only lest the accessory be punished, and the principal acquitted. *N. A. R.* vol. 2, page 220.

even an accessory after the fact.

1014. When five persons rescued one accused of an attempt at murder from those who had seized him in the act, and the magistrate committed him for the attempt at murder, and punished the rescuers for a simple assault ; the court held that the proceedings were exceedingly irregular, and that the rescuers should have been committed as accessories after the fact to the attempt at murder. Reports *L. P.* 1851, page 803.

If the principal has not been apprehended, magistrate may convict of privy,

not otherwise.

1015. Both courts of nizamat adawlut have ruled, that magistrates are competent to try parties charged with privy to murder, or privy to other offences beyond their cognizance, and to punish the said parties as for a misdemeanor, provided that the principals accused of the murder or other offence have not been apprehended. But if a party so charged with privy be apprehended along with those accused of the principal offence, the magistrate must commit him to the sessions court, that there may be one trial by that court of all charges connected with the same offence. *C. O.* No. 32 of vol. 4, *W. P.* It appears, however, doubtful whether this rule is in force in the *Lower Provinces*. See Reports *L. P.* 1854, part 2, page 608 ; and 1855, part 2, page 529 ; the former of which seems to deny, while the latter confirms the rule.

1016. In a case of theft, attended with murder, the magistrate committed one of the persons concerned on the simple charge of theft, absolving him from the charge of participating in the murder ; and in another case of theft, attended with burglary, committed on the same night, in which the same individual was concerned, he made no commitment, but discharged the prosecutor and witnesses, and appended his proceedings to the former case. The court deeming these proceedings irregular, quashed them, and directed that the prisoner should be committed on the whole of the first and also on the second charge. *N. A. R.* vol. 2, page 457.

1017. A magistrate is not competent to commit a wife for adultery, when no such charge has been preferred against her by her husband. *N. A. R.* vol. 3, pages 177, and 298.

visiting from usual course to be noted.

208 et seq.

1018. Whenever it is deemed expedient that a prisoner committed at one station should be brought to trial at another, the authority of government, or the nizamat adawlut must be obtained in the first instance under the provisions of sect. 3, Reg. VIII. 1822* ; and the want of such previous sanction vitiates the whole of the proceedings. Whenever authority for deviating from the usual course has been obtained, it is to be certified on the record of the proceedings. *C. O.* No. 323 of vol. 1.

1019. In cases committed to the sessions, the roobakaree of the magistrate containing the order of commitment is to be drawn up in a prescribed tabular statement, for which see Appendix C. No. 3. C. O. No. 14, February 9, 1855. *L. P. C. O.* No. 789, June 16, 1855. *W. P.*

Final roobakaree, and calendar.

1020. Magistrates are carefully to record in this roobakaree the precise charge on which they commit the prisoner; and such charge is to be entered in English and the vernacular on a separate paper annexed to the roobakaree, bearing the magistrate's official signature at full length, and the date of commitment. The magistrate is to take especial care that the proper vernacular word is used to designate the offence charged; thus, in a charge of murder, the term used should be "*kutl-umd*;" and in a charge of culpable homicide "*kutl-shibeh umd*." C. O. No. 54 of vol. 2, paras. 15 and 16.

Charge to be recorded precisely.

Care to be taken that the vernacular term is correct.

1021. The separate paper containing the charges in English and the vernacular, prescribed in the above rule, is to be drawn up and signed by the civil judge, when he makes a commitment for perjury brought to light in the course of any civil proceeding. C. O. No. 4 of vol. 4.

When a civil judge commits for perjury, he is to draw up and sign the separate paper of charges.

1022. If a commitment is made under special instructions of the commissioner of circuit, either of his own authority as in cases of perjury, or in modification of the original order of commitment by the magistrate; or in cases of perjury by order of a civil judge, or other authority empowered to commit in such cases; the same is to be noted in the proceedings. C. O. No. 54 of vol. 2, para. 18.

If commitment is made under special instructions.

1023. In cases of theft, burglary, or receipt of stolen property, the magistrate is to make a point of recording, in his roobakaree of commitment, the express circumstance or circumstances of aggravation, which have led him to commit the case, instead of disposing of it himself under Reg. XII. 1818. C. O. No. 239 of vol. 1.

In cases of theft, &c, circumstances of aggravation to be recorded.

1024. When a magistrate has occasion to commit for trial a person, who has been formerly apprehended, he is to attach to his proceedings a report from his principal native officer, countersigned by himself, stating concisely the date and ground of the former apprehension, and the issue of the case. The adoption of this measure may be attended with benefit to the prisoner, by showing his former innocence; or it may be useful to the session judge, in some cases, by enabling him more readily to determine on the propriety or otherwise of requiring from the prisoner security for his future good behaviour. C. O. No. 203 of vol. 1.

If the prisoner has been previously apprehended on a former charge.

1025. If the magistrate commits any zumeendar, independent talookdar, or other actual proprietor of land, he is to notify the commitment to the collector, that, if necessary, he may take measures to prevent any delay in the payment of the public revenue assessed upon the lands of the offender. *Beng. Reg.* IX. 1793. sect. 18. *Ced. Prov. Reg.* VI. 1803, sect. 18. The requirement of this rule is rendered unnecessary by the provisions of the sale law, Act I. 1845.

If a landholder is committed.

1026. Magistrates and session judges are to keep separate, as far as possible, the trials of prisoners upon distinct charges, especially where the prosecutors are also distinct. C. O. No. 2 of vol. 1.

Proceedings on distinct charges.

1027. The calendar is to be accompanied with the magistrate's proceedings on each charge, which are to contain the following vouchers, or as many of them as from the nature

What documents are to be submitted to the sessions with the calendar.

and circumstances of the case are requisite and procurable, and with such other documents as the magistrate may have in his possession, or judge necessary to be obtained for the information of the sessions court.

An attested copy of the complaint or charge.

An attested copy of the plaintiff's oath to the truth of the charge, in which is to be inserted, in case of robbery and theft, the inventory of the money or property stolen or plundered, with the amount or computed value of it.

The prosecutor's recognizance to appear and prosecute the charge.

A copy of the warrant for the apprehension of the offenders, or, in case the charge has been preferred in the first instance to the police, a copy of the proceedings of the police.

The name or names of the person or persons apprehended.

The examination of the person or persons apprehended.

The further examination of the prosecutor on oath in cases where any such examination has been taken.

A list of the witnesses summoned by desire of the prosecutor, particularizing the names of such as may be in attendance, and those who are absent, with the cause of the non-attendance of the latter.

The recognizances of the prosecutor's witnesses.

The depositions of the witnesses who have been in attendance.

The names of the witnesses who have been summoned at the requisition of the prisoner, specifying those who are in attendance, and such as are absent, and the cause of the non-attendance of the latter.*

* See para. 1196.

Beng. Reg. IX. 1793, sect. 14. Ced. Prov. Reg. VI. 1803, sect. 14.

The circumstances first inducing suspicion against the prisoners are to be noted in the calendar;

1028. As a knowledge of the grounds which have led to the apprehension of the prisoners, is in many cases essential to enable the court to come to a correct conclusion as to the guilt or innocence of the accused, magistrates and other committing officers are to state in the calendar the circumstances which first induced suspicion to attach to the prisoners, and ultimately caused their apprehension on the charge of committing the offence for which they have been put on their trial. C. O. No. 14 of vol. 4. *L. P.*

by the magistrate who is to draw up the summary

s. are
C. O.

1029. The magistrate is not to assign this duty to the clerk charged with preparing the calendar by means of a translation of the purport of the Oordoo proceeding of commitment; but is himself to write down a summary of the grounds upon which a case is committed (for exhibition in the calendar) at the same time that he passes the order of commitment to the sessions court.† C. O. No. 1047, August 10, 1854; *W. P.* and No. 10, November 17, 1854. *L. P.*

List of written documents adduced in evidence to be recorded in calendar.

1030. In cases of forgery, embezzlement, and the like, an accurate list of all the written documents to be produced before the sessions court, as evidence for or against the prisoner, is to be recorded in the calendar of commitment, and submitted to the session judge. C. O. No. 211 of vol. 2. C. O. No. 52 of vol. 4.

1031. When individuals are brought to trial for offences committed out of the limits of the British provinces, a copy of the letter of the magistrate, applying for the authority of government to hold such trial,* as well as the letter of government conveying such authority, is to be filed with the proceedings. C. O. No. 4 of vol. 2.

Document to be adduced in case of trial for offence committed in a foreign territory.

* *r. paras*: 215 and 245.

1032. Whenever a magistrate commits a prisoner for trial, he is immediately to intimate the same to the session judge, that no unnecessary delay may occur, in a prescribed form;† and the judge, in reply, is to intimate, in prescribed form,† the day on which he may be able to take up the case. C. O. Nos. 109, and 234½ of vol. 2.

Immediate intimation of commitment to be given to judge by letter; and reply.

† *r. Appendix C*, No. 8.

1033. A roobakaree, containing the same information, should be written and despatched as soon as the commitment has been made, and should specify the precise charge on which the prisoner or prisoners have been committed, and direct the mohafiz to enter the commitment, under its proper heading, mentioning the number that the offence bears in the statement and an abstract of the grounds of commitment. The final roobakaree containing the grounds of the commitment can be drawn out afterwards, though it should be the main object with every magistrate to forward the calendar and his proceedings to the session judge as soon as the attendance of the parties and witnesses can be procured, in order that the trial may be proceeded upon with as little delay as possible. C. O. *W. P.* No. 185, para. 2.; and *L. P.* No. 190, para. 8; of vol. 2. Rules for preparation of magistrate's statements, in Appendix E, No. 22.

The same intimation to be given by roobakaree, and directions as to the class of crime.

Delay in forwarding the case to be avoided.

1034. A case is to be considered pending before the session judge from the date on which the parties reach his court, whether such date be that fixed by him, or one posterior. C. O. No. 71 of vol. 3.

When the responsibility of the offences.

1035. All prisoners committed by a magistrate, in any one month, are to be numbered by that officer in his calendar of commitments in one continuous series, commencing and terminating with the month, the last serial number indicating the number of persons committed during that period. In districts where there are two or more officers, vested with the full powers of magistrate, the magistrate of the district is to number in one series the whole of the prisoners committed by himself and his subordinates in any one month; and to enable him to do so, he is to require the officers, who have the power of making commitments, to furnish him with a report of the number of commitments made by each and the number of prisoners in each case. Rules for preparation of judge's statements in Appendix D, No. 57. C. O. No. 109 of vol. 2.

mitted to be numbered in a new numerical series for each month.

1036. In preparing the calendar (in accordance with the form given in sect. 13, Reg. IX 1793 *for Beng.* and sect. 13, Reg. VI. 1803 *for Ced. Prov.*)(a) the prosecutor's witnesses are to be classed under three subordinate heads, or as many of them as are applicable in each case; viz. 1st, witnesses to the charge; 2nd, witnesses to confessions; 3rd, witnesses to character. So also the witnesses on the part of the prisoner are to be classed under two heads; viz. 1st, witnesses to the defence; and 2nd, witnesses to character. And the magistrate should

Classification of witnesses in calendar.

(a) These sections, as well as all parts of regulations prescribing forms of periodical statements, &c. have been rescinded by sect. 2, Reg. VII. 1829; and by clause 1, section 8, the sudder court was directed to prescribe all such forms, and to fix the periods of their transmission. But it was ordered at the same time that all forms previously prescribed by the regulations should remain in force, until the sudder court should alter or direct the discontinuance of them.

* For form of calendar v. Appendix C, No. 9.

also adopt any other subordinate head, which appears useful or necessary.* C. O. No. 170 of vol. 1 ; and appendix to C. O. No. 54 of vol. 2.

Evidence how to be classified in the calendar.

1037. The magistrate in the calendar of commitment, under the column of circumstantial evidence, is to classify the witnesses according to the nature of their evidence; indicating by a heading in red ink, the particular subject matter to which the witnesses are expected to testify. It is impossible to lay down rules to meet every case, but the specimen given in the note(a) sufficiently shows the nature of the classification required. C. O. No. 111 of vol. 4. *L. P.* C. O. No. 1016, July 8, 1856. *W. P.*

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Appendix
C. No. 9½.

1038. In addition to the calendar and other documents, now sent to a session judge on a commitment, the magistrate, whenever more than one prisoner is included in the calendar, is to prepare a statement in the tabular form A* filling up carefully such of the columns as may be necessary in the particular case from the evidence taken before himself and the police. The session judge, who tries the case, is to fill up the third comparative column from the evidence given before him, and in all cases either referred or appealed to or called for by the court this statement is to form part of the nuthee. In cases of murder, affray, or other charges, it is competent to the magistrate to change the headings of cols. 10 and 11, as occasion may require, to the identification and finding of the lethal weapon, or any other article tending to establish the facts alleged. All officers are desired particularly to observe the manner in which the accompanying form* has been filled up and to enter the figures and names in red ink as well as black ink according to this specimen. C. O. No. 111 of vol. 4 ; and No. 5, May 26, 1854. *L. P.* C. O. No. 1016, July 8, 1856. *W. P.*

1039. In order to facilitate reference and to expedite the completion of a trial, great care should be taken to exhibit at one view in the calendar the property *numbered*, and the names of the witnesses before whom the said property was produced from the houses or possession of each prisoner. Possession of property of the same description, if not numbered, cannot be proved against the person charged with possession. Reports *L. P.* 1852, part 2, page 347.

Circuit.
Proclamation of
date on which
judge will take up
the case.

1040. Upon receiving notice from the judge of the day on which he intends to take up the case, the magistrate is to cause public notice of it to be given by a written publication, requiring all persons discharged upon bail, and all prosecutors and witnesses who have been bound over to appear, to attend on the day fixed, under the penalty of forfeiting their recognizances.(b) Reg. IX. 1793, sect. 11.

(a) Circumstantial Evidence.

Exd.

Witnesses who heard a noise, and on going to plaintiff's house found him lying wounded.

5. Ram Das.

6. Joynarrain.

Exd.

Witnesses who saw prisoners 2, 3, 4, near the village on the evening previous to the dacoity.

7. Pitumber Sein.

8. Issur Chuuder.

9. Bhurat Naik.

N. B. The words in Italics and figures should be inserted in red ink.

(b) This section was enacted with reference to the periodical arrival of the court of circuit: and a copy of the abovementioned publication was directed to be published in each pergunnah of the district. The provision may still apply to joint-magistrates, at whose stations quarterly sessions are held.

1041. Prisoners committed by a magistrate after the arrival of the session judge on circuit at his station, are always to be tried at the sessions then pending, provided that no material delay occurs in procuring the attendance of the witnesses, or in other preparations for the trial. But in order to prevent the indefinite detention of the judge by the trial of such commitments, magistrates are restricted to one supplementary calendar, including persons, committed or held to bail for trial before the sessions court during the session of the court for the trial of the prisoners named in the original calendar. C. O. Nos. 9, 49, and 77 of vol. 1.

Commitments made by magistrate after the arrival of session judge on circuit.

1042. In the case of an officer being vested with magisterial powers, and deputed permanently or temporarily to exercise them within a portion of a district, or of an officer's being placed in charge of a tract of country comprising portions of several jurisdictions, it is competent to government, at the time of creating such an authority, or at any time subsequently, to determine and prescribe, by an order under the official signature of a secretary to government, at what station and in what manner prisoners committed to take their trial before the court of circuit, for offences perpetrated within the limits assigned to such officer, are to be brought to trial for the same. Notice of every such determination is to be given to the nizamat adawlut, and that court is to take the necessary steps to carry the same into execution. Reg. VIII. 1822, sect. 6.

Commitments made at subordinate station.

In the case of a newly created magistracy or joint-magistracy government is to decide where and how the sessions are to be held.

1043. The jail deliveries are ordinarily to be held at the station of the magistrate or joint-magistrate making the commitments: but it is competent to government, and the nizamat adawlut with the authority of government, to direct the sessions for any district, which is under the authority of a joint-magistrate, to be held at the sudder station of any of the zillahs in which the thanas, constituting the jurisdiction of such officer, or any of them, may be situated, provided that such station is within the division of the commissioner to whom the joint-magistrate is subordinate. Reg. I. 1829, sect. 3, cl. 3.

Government may direct the for any trial any the same division.

1044. This is explained to mean that it is competent to government to direct the sessions for any joint-magistracy to be held generally at any station within the jurisdiction of the commissioner of circuit to whom the joint-magistrate is subordinate, so long as the orders to that effect remain unrescinded. Reg. II. 1831, sect. 4.

1045. When a magistrate or joint magistrate, having jurisdiction limited to the district of a session judge, or extending to other districts, is stationed at any place within the jurisdiction of the judge, all cases committed to the sessions by such magistrate or joint-magistrate, are to be submitted to the judge through the magistrate at the sudder station as soon after commitment as practicable; and the judge is authorized and required to try all such cases under the same rules, as if committed by the magistrate of the sudder station.(a) Reg. VII. 1831, sect. 12, cl. 1.

Such commitments to be forwarded to the sudder station.

(a) This rule, however, is obsolete in practice, except as regards the districts of Howrah and Baraset. For, by the orders of the Bengal Government, No. 220, dated February 6th, 1848. and passed apparently under the authority of the provisions of the preceding paragraphs, quarterly sessions are held at the stations of certain independent joint magistrates, where session judges are not permanently stationed; viz. Noacolly, Furreedpore, Chumparun, Bograh, Maldah, and Pubna. The nizamat adawlut was directed to fix the times of such sessions, only taking care that not less than three months should occur between each. Under a similar rule (I presume) the judge of Bhaugulpore holds quarterly sessions at Monghyr. The commitments of Howrah and Baraset are tried at Alipore by the judge of the 24-Pergunnahs.

1046. Prisoners committed by joint-magistrates not residing at the sudder station should be forwarded to the sudder station, and brought to trial at the regular sessions of the district, in like manner with prisoners included in the commitments by the magistrate.(a) Const. No. 135.

Disposal of proceedings and prisoners in such cases. Information of the sentences to be sent to the joint magistrate.

1047. In such cases, the proceedings on the commitments are to be returned to the office of the joint-magistrate, by whom they were committed, after the completion of the trials; and copies or abstracts of the sentences of all prisoners, whether convicted and sentenced to punishment, or acquitted and discharged, are also to be sent to him. If the prisoners are sentenced to a period short of perpetual imprisonment, and if banishment form no part of the sentence, they are to be sent to be imprisoned at the station of the joint-magistrate, provided the jail of such station have room and accommodation for them without danger to their safe custody or health: where this is not the case the prisoners must, either all or some of them according to the necessity of the case, be confined in the jail of the magistrate's station. C. O. No. 288 of vol. 1.

But discretion vested in government in defining the jurisdiction of the judge.

1048. But, if on account of distance or other cause it is deemed expedient to limit the jurisdiction of the judge to cases originating within the limits of his own district, or to exclude from his jurisdiction all the commitments made by such magistrates or joint-magistrates and to transfer them for trial to the judge of another zillah, or to leave them to be decided by the commissioner of the division at the station of those magistrates or joint magistrates, it shall be competent to the government to direct the same. Reg. VII. 1831, sect. 12, cl. 2.

Commissioner of circuit, engaged in sessions, may fix the periods of holding such.

1049. It is also competent to any commissiioner, to whom the session duties of the sudder station of any zillah, at which he may ordinarily reside, may be reserved, to require the magistrates or joint magistrates, stationed within the limits of that zillah, to forward all cases committed, at such periods as the commissioner may deem proper, for trial before himself at the sudder station. Reg. VII. 1831, sect. 13, cl. 1.

Prisoners.
When fetters may be imposed.

1050. As it is the evident intention of the regulations that no prisoner, before he is brought to trial, should suffer more corporal restraint or personal ignominy than may be unavoidable for his safe custody and appearance at the time of trial,—magistrates are not to confine in fetters any person left for trial before the sessions, who is charged with a bailable offence, and committed to prison from inability to find bail; or who, though not admitted to bail, is not charged with a heinous offence, such as from the nature and circumstances of the case, considered with the prisoner's condition of life, may appear to render the use of irons indispensably requisite for his secure custody. And even in regard to heinous offences, such measure of severity should never be resorted to, except in extreme cases, or where the prisoner is of a character so dangerous as to render the imposition of fetters absolutely necessary to his safe custody. C. O. Nos. 40, 206, and 210 of vol. 1, and No. 32 of vol. 2.

(a) This construction was superseded by the provisions of Reg. XVII. 1825, which prescribed special rules for holding the sessions at the stations of the joint-magistrates of Baraset, Balasore, Malda, Monghyr, and Shahjehanpore; but that regulation is rescinded by Reg. I. 1829; and cl. 1, sect. 12, Reg. VII. 1831, quoted above, re-enacts the rule. See "Index to the Constructions;" head Commitments, No. 2, page 22.

1051. A main object of Regulation VII. 1831, was to relieve parties and witnesses from the inconvenience of frequent journeys to and from sudder stations, and lengthened detention when there. A session judge should not, therefore, hold monthly sessions of jail delivery at stated periods; but should proceed upon each trial as soon as practicable after the commitment has been made by the magistrate. Circumstances may occur to prevent a judge from taking up the case immediately, but he is required to use his utmost endeavors to prevent unnecessary delay. C. O. No. 108 of vol. 2. See also sect. 4, Reg. VII. 1831.*

Duty of session judge on receiving commitment

ceeded upon immediately after commitment.

* ¶ 1111.

1052. On first taking up a case committed for trial, the judge should compare carefully the written charge, on which the prisoner is committed, with the facts of the case as stated in the magistrate's roobakaree of commitment; and, with reference to paras. 15, 16, 17, and 18 of C. O. No. 54 of vol. 2,* in this stage of the proceedings, he should cause the magistrate to rectify what may be erroneous, and supply what may have been omitted. He should cause the commitment to be amended, before proceeding to try the prisoner. C. O. Nos. 135, and 98 of vol. 2. Const. No. 857.

Judge may direct the charge to be amended before trial;

* See paras: 1006 et seq.

1053. It is the duty of the session judge, upon the inspection which he is required to make immediately on the receipt of a trial committed to his court, to apply a prompt correction to irregularities in the framing of criminal charges. Such irregularities are *then* easily remediable; but after reference to the nizamat adawlut, can be amended only by the inconvenient course of annulling the entire proceedings, where the defect may be so vitiatory as to demand the adoption of such a course. C. O. No. 1047, August 10, 1854. *W. P.*

and corrections may easily be made then, which, if allowed to pass, might afterwards involve the annulment of the entire proceedings.

1054. Should the session judge see reason to direct any alteration of the charge, on which a prisoner has been committed, he will distinctly state in his order to the magistrate the heading under which the case should be included in his statement No. 1, part 1; but he will postpone entering the case in his own statement No. 1, until he has heard from the magistrate, that he has carried the order into execution. C. O. No. 185 of vol. 2, para. 3. *W. P.* No. 190 of vol. 2, para. 9. *L. P.* No. 6 of judge's rules in Appendix D.

In such cases the judge is to instruct the magistrate under what heading the case is to be included.

1055. When a person charged with a criminal offence has been committed, or held to bail, by a magistrate, to stand his trial before the sessions, it is not competent to the session judge to annul the magistrate's order, and to prevent the regular trial of the person so committed or held to bail. Reg. VI. 1818, sect. 3, cl. 2.

Judge cannot annul commitment so as to prevent trial;

1056. But the nizamat adawlut, considering a commitment to have been made without due inquiry, annulled it, and directed the magistrate to make further enquiry, and recommit if he saw sufficient grounds. Const. No. 290.

but the nizamat annulled for want of inquiry.

1057. Under all circumstances a sentence of conviction or acquittal must be passed upon every person committed for trial. N. A. R. vol. 5, pages 145, and 173.

1058. But session judges are competent to cancel commitments. There is nothing either in the spirit or the terms of Act XXXI. 1841, which restricts them from directing the re-commitment of a prisoner upon a higher or different charge from that on which he is arraigned, if they consider that such a course is suitable to the facts proved by evidence in the case. The usual and by far the most frequent occasion, for the alteration of charges by a

Judge may cancel commitment, and order re-commitment on a higher or different charge;

session judge, will arise on his first taking up a case, and comparing the written charge with the facts stated in the roobakaree of commitment (as required in para. 1052). If however the alteration should be required to be made upon the facts of a case, as derived from the evidence taken and well established before the session judge, (this being a power to be exercised only on the plainest and strongest grounds) the proceedings in the trial should be at once stopped, and the case remanded to the magistrate with the necessary directions for a fresh commitment. C. O. No. 70 of vol. 4. *L. P.*

and may quash the commitment if the magistrate has the prisoner to the sessions. But he cannot cancel a commitment merely because he differs as to the tribunal before which the case should be tried; and he should ask the magistrate for what reasons he made the commitment.

1059. Under Const. No. 782 a session judge may cancel the commitment in a case of which the magistrate has power to dispose.^(a) But in cases in which the magistrate is at liberty to exercise his discretion in bringing the accused to trial in the sessions court, the judge cannot cancel the commitment, merely because he differs in regard to the tribunal before which the case should be brought. In such cases however the special reasons which have induced the magistrate to commit, must be assigned, for otherwise the judge would be justified in cancelling the commitment. C. O. No. 70 of vol. 4. *L. P.* But it seems that, if the judge be of opinion that the case is within the competency of the magistrate, and no special reasons are assigned in the roobakaree of commitment, or shown on the proceedings, to justify the commitment, or to lead to the inference that the magistrate considers the punishment which he can award insufficient to the offence, the judge should call upon the magistrate to supply the omission; and should cancel the commitment only when it appears that the commitment was made through error or negligence. See Const. Nos. 301 and 391.

Judge cannot cancel a commitment for insufficiency of preliminary investigation, or for want of proof. In case he should further en-

1060. An apparent defectiveness in the preliminary investigation is not a sufficient reason for cancelling a commitment. If the evidence against the prisoner is insufficient for conviction, and the judge has reason to believe that further evidence might be had against him, he may direct such further evidence to be sought for and sent in, the prisoner remaining in the mean time under commitment. The conduct of the preliminary investigation is exclusively in the hands of the police officers, who are responsible for it only to the magistrate and the superintendent of police, and not to the judicial authorities; but the session judge should bring to the notice of the superintendent of police any irregularity or want of efficiency on the part of the police, which comes to his notice during a criminal trial. If it appears to the judge that the charge is not susceptible of further proof, he should pass sentence of acquittal. C. O. No. 1000 of vol. 4. *L. P.* N. A. R.

or should acquit the prisoner.

Reports *L. P.* 1852, part 1, page 1083.

Nor can the judge annul a commitment because he considers that the ill-taking up

1061. Where a judge cancelled a commitment, because it appeared that the magistrate and police acted illegally in taking up the case, the nizamat adawlut directed him to withdraw his order of annulment; to proceed to try the commitment in due course; and, on the conclusion of the trial, to refer the case for the orders of the court on any point of law in regard to which he might be in doubt. N. A. R. vol. 6, page 35.

can- not be amended after the prisoners

1062. The session judge cannot remand a case to the magistrate with directions for a fresh commitment after the defence has, at the close of the evidence for the prosecution, been

(a) The power of cancelling a commitment in such cases does not include the power to cancel a conviction by a magistrate for an offence within his competence, and to direct a commitment. Reports *L. P.* 1856, part 1, page 873.

taken from the prisoner on the charge as laid against him by the magistrate. C. O. No. 70 of vol. 4. *L. P.* N. A. R. vol. 6, page 7.

have made their defence to the charge as first laid.

1063. Where the prisoners have been improperly committed for culpable homicide, and tried by the sessions court, the nizamat adawlut have quashed the proceedings, and directed a re-commitment for wilful murder. And in some such cases the prisoners have been sentenced to death. Reports *L. P.* 1852, part 2, pages 796 and 951.

The sudder court

rect commitment.

1064. But, in a trial which was held to be illegal, and annulled, and the magistrate desired to re-commit in a legal manner, the court did not think proper to order the re-commitment of some of the prisoners, against whom there appeared to be no sufficient evidence; and who, had the trial been legal, would have been regularly acquitted and released. N. A. R. vol. 2, page 393.

If proceedings are quashed, acquitted prisoners need not be re-committed.

1065. Where a magistrate dismissed a complaint of rape against a defendant, and afterwards committed him on a charge of adultery, it was held that the session judge acted irregularly in cancelling the commitment and directing a fresh commitment for rape.(a) Reports *W. P.* 1855, part 2, page 494.

Example

different

1066. Where a session judge misdirected the magistrate by quashing his commitment of burglary on the ground of the evidence amounting to embezzlement only, while, in fact, the crime was burglary, the sudder court held the whole of the proceedings in the sessions court on the charge of embezzlement to be void and quashed them. Reports *L. P.* 1851, page 869.

A misdirection on

proceedings void.

1067. When the session judge remands a case to the magistrate for a fresh commitment, it is unnecessary to pass any orders regarding the accused. But where a judge under such circumstances issued warrants of acquittal in regard to prisoners committed on a charge of culpable homicide, it was held to be no bar to their subsequent commitment for, and conviction of, wilful murder on the same evidence. Reports *L. P.* 1854, part 2, page 587.

When a case is remanded for a fresh commitment, the prisoners need not be ac-

1068. A report need not be made now to the sudder court, as was formerly requisite, when a commitment is cancelled by a session judge. The judges are to exercise their discretion on this point, as in other parts of their duties, on their own responsibility; though they may of course make any special report to the court, which, in particular instances, they think necessary for its information. C. O. No. 70 of vol. 4, *L. P.* and No. 76 of vol. 4, *W. P.*

quired to sudder court of the cancelling a charge.

1069. A formal razeenamah, or compromise, ought not to be admitted by a session judge, to bar the trial of any commitment made by a magistrate; both as there is no provision for such in the existing regulations; and as the practice of discharging the prisoner on acquittal, when evidence is not adduced for his conviction, and the ends of public justice do not require a postponement of the trial for further evidence, appears preferable to the admission of a compromise, which might perhaps leave the prisoner exposed to a future prosecution. C. O. No. 187 of vol. 1.

Judge cannot admit compromise

1070. A session judge is not at liberty, in the case of a commitment made by a magistrate, to punish the prosecutor for a groundless and malicious complaint; as the very fact

Judge cannot punish for a groundless complaint in a commitment.

(a) It is not clear from the report of this case, whether the irregularity consisted in the direction for commitment on a charge, which the magistrate had dismissed, or in the tendency of the evidence adduced to prove the one charge instead of the other.

of the commitment having been made by the magistrate affords sufficient presumption that the complaint is not of that nature:—though he is competent to direct the commitment of the prosecutor, and his witnesses for perjury, in the event of his seeing reason to believe that a false accusation has been preferred on oath, and that an attempt has been made to substantiate it by false evidence. Const. Nos. 528, and 530.

SECTION XXI.

OF THE PUBLIC PROSECUTOR.

prosecutor in all
heinous cases.

1071. Magistrates are required to make the government prosecutor or co-prosecutor in all heinous cases. C. O. No. 85 of vol. 4. *L. P.*

1072. The following rules are in force in the *Western Provinces* only. In all commitments for heinous offences, in which the course may be allowed by law, the magistrate is to direct the prosecution to be conducted on the part of government, and is to appoint either the government vakeel or any other respectable person to act as prosecutor. The trial is to be opened in the sessions court by the vakeel of government, or other persons selected as above, who is to read a petition from himself, containing the charge or charges upon which the prisoner has been committed, in the same words as have been used in the calendar and roobakaree of commitment. The aggrieved parties are to appear among the witnesses for the prosecution, and their evidence is to be taken in that character. C. O. No. 88 of vol. 4. *W. P.* Under this rule every prosecution must be on the part of government alone. Reports *W. P.* 1855, part 1, page 209.

Any person may
officiate as prosecu-
tor.

1073. The magistrate is at liberty to direct any person, whom he may think fit, to officiate as government pleader for conducting prosecutions on the part of government. Const. No. 600.

Magistrate may
direct public pro-
secution at his dis-
cretion.

1074. A magistrate is perfectly justified in exercising a discretion in appointing the government pleader to prosecute in cases of murder, notwithstanding that there may be near relations of the deceased competent to prosecute. Const. No. 778.

Even when the
injured party de-
clines.

1075. Where the injured party, in a case of theft, declines prosecuting, the magistrate may still, if he think fit on a view of the nature of the case, direct a public prosecution. Const. No. 318.

When there is no
private prosecutor,
the government
pleader should be
ordered to prose-
cute.

1076. In a case of murder and wounding, the law officers convicted the prisoner of the murder, but would not give a futwa on the charge of wounding, as no one had prosecuted upon that charge. The court observed that, to complete the proceedings on the trial, the magistrate or the sessions judge should have ordered the government pleader to prosecute, in the absence of the wounded persons. *N. A. R.* vol. 2, page 241.

1077. In a case of rape the only prosecutor appearing being the ravished girl, who was an infant, the proceedings were returned with instructions that the vakeel of government should be directed to prosecute. N. A. R. vol. 3, page 170. So, when prosecutor is an infant.

1078. There is no objection against employing the superintendent of police, or any other officer whom the government may appoint, not being the committing officer, to conduct a prosecution before the sessions court, provided he be recognized as the prosecutor, or agent of government for conducting the prosecution, and be not authorized to interfere in any other capacity in the trial. Const. No. 279. Employment of superintendent of police, or other officer, to conduct.

1079. In cases of commitment made by the superintendent of police in his capacity of magistrate, he should not be employed to conduct the prosecution before the sessions court; though no objection would attach to the nomination of his assistant, or the assistant to the magistrate, to manage the prosecution in such cases. Const. No. 279. Officer not to be so employed when he has himself made the commitment.

1080. In charges preferred and prosecutions conducted on the part of government, the vakeel of government, or other person acting as prosecutor for government, is not to be required to make oath, or subscribe a declaration to the truth of the charge, when preferring it to the magistrate, or stating it to the sessions court. *Ced. Prov. Reg. VIII. 1803*, sect. 25, cl. 5. *Beng. and Ben. Reg. L. 1803*, sect. 4. Government prosecutor.

1081. The court *L. P.* promulgated the following instructions, contained in a letter from government No. 446, dated May 22, 1851, for observance by the magistrates regarding the discretionary employment of pleaders on behalf of government in criminal trials, which may be thought especially to require it. "The employment of a government pleader in criminal trials in the sessions court, does not appear to be thought necessary by the sudder court, except in cases in which, under Act XXXVIII. 1850, pleaders may appear on the part of the prisoners. These cases may be expected to be few, and it will probably be only prisoners of some pecuniary means who are found to take advantage of the Act. But to prisoners of such means, the president in council doubts if it would be in the main safe to oppose such vakeels as could be retained for the very small salary of 15 rupees a month, and it may at all events hardly seem necessary to pay these vakeels all through the year for services which will perhaps be seldom called into action. Until, therefore, the extent of the operation of Act XXXVIII. 1850 is better known, the president in council is of opinion that it will be sufficient to empower the magistrates, under proper checks, to employ good pleaders on behalf of government in any particular cases which may be thought especially to require it, and to pay a suitable and sufficient fee on every such occasion for the service performed." All instances of pleaders being so employed, with the fee settled in each case, are, until further orders, to be reported by the magistrate through the session judge for the court's information. C. O. No. 68 of vol. 4. *L. P.* Magistrates empowered to employ pleaders on behalf of government, in any criminal trials, which may be thought especially to require it. *L. P.*

1082. The government *W. P.* has similarly empowered magistrates to employ, under proper check, good pleaders on behalf of government before the sessions courts, in any particular criminal cases, which may be thought especially to require it, and to pay a suitable and sufficient fee on every such occasion for the service performed. Such agency is mainly intended to be used in cases where the prisoners are defended by counsel. But if, Such cases to be reported to sadder court

Similar laid down in

in any case, the magistrate thinks it advisable that a sessions trial should be so conducted, the duty should, under usual circumstances, be entrusted to the government vakeel, who will be entitled to such fitting remuneration, as may be recommended for the extra labor devolving on him. Any such charges are to be submitted by the magistrate in a monthly contingent bill to the sudder court through the session judge, who is to state his own opinion as to the necessity for the vakeel's services in the particular case, and the suitableness of the fee proposed to be granted to him. C. O. No. 142, February 7, 1854. *W. P.*

Rules regarding the appearance of the government advocate or his de- in court.

In all appealed or referred cases government advocate may appear;

whether the prisoner has or has not employed counsel.

Pleaders for prisoner in appealed cases to give notice of pleas of fact and of law.

Government advocate to give notice if he intend to appear when prisoner has not employed counsel.

may call for prisoner.

1083. The following rules are promulgated regarding the appearance of the superintendent and remembrancer of legal affairs as government advocate in the nizamat adawlut.

Rule 1. In appealed or referred cases, the government advocate shall be competent to appear, and he shall ordinarily appear by himself, or, at his discretion, either by the senior or junior government pleader on behalf of the government, in all cases in which government has been the prosecutor, and in which a pleader is employed for the prisoner. And it shall be further competent to him to make appearance, in like manner, in any appealed or referred case, instituted on the prosecution of government, in which, although no pleader may have been engaged for a prisoner, it may seem to him, acting in communication with the superintendent of police, or directly with the magistrates, when there may not be time for a reference to the superintendent of police, important that there should be an appearance by a pleader on behalf of the government.

Rule 2. Pleaders, appearing for a prisoner in *appealed cases*, shall be bound to give in to the register's office, at a time not less than one week before the date fixed by the court for the public hearing of the appeal, a note, under distinct heads, of the pleas of fact and of law on which he rests his appeal, and the register shall cause such note to be transferred to the senior government pleader. But it shall be competent to such pleader for the prisoner, on leave of the court, to put in, at the hearing of the appeal, any further pleas of law, which he may desire to argue. The register shall also intimate to the senior government pleader when a pleader may be appointed on behalf of a prisoner in a *referred case*.

Rule 3. The government advocate shall, through the senior government pleader, give immediate notice to the office of the register, when he may intend to appear in a case in which no pleader has been engaged for a prisoner, and the register shall thereupon intimate the same to the judge to whom the case has been submitted, and the judge shall fix such date as he may think suitable for the public hearing and decision of the case.

Rule 4. It shall also be competent to the court to call for the appearance of the government advocate, either by himself, or by the government pleaders, as he may determine, in any case in which, from its special character, they may consider that such an appearance would be manifestly conducive to the better administration of justice.

Rule 5. In cases whether referred or appealed, in which there may be an appearance for the government, as above provided, without the previous employment of a pleader on behalf of the prisoners, charged or convicted, the court shall be competent to nominate a pleader to appear on behalf of the prisoner, and to assign to him such remuneration as it

may deem suitable, not exceeding rupees 200 in any case; such amount to be paid on a contingent bill, under the countersignature of the register of the court.

Rule 6. The superintendent of police shall give such directions to the magistrates, as he may deem necessary, in order to their apprizing the government advocate of the cases, whether referred or appealed, in which it may be thought by them of importance, that there should be an appearance before the nizamat adawlut on behalf of the government; and he will also, in the discretion which belongs to his office, communicate directly with the government advocate regarding such cases as he may see fit.

Rules
the relation of the
government advo-
cate to the superin-
tendent of police
and the magistrate.

Rule 7. The government advocate shall, after any communication with the magistrates which he may find necessary, correspond with the superintendent of police, on the subject of any case in which, whether a pleader shall or shall not have been engaged on the part of a prisoner, it may appear to him unadvisable that he should make appearance in court, whether by himself or his deputies, on behalf of government. If after such correspondence with the superintendent of police, an appearance shall still appear inexpedient to the government advocate, he may, in his discretion, refrain from appearing; and the case shall then be left to be disposed of by the court upon consideration of the record, after hearing the pleader for the prisoner, in any case in which such pleader may have been employed.

Government ad-
vocate to corres-
pond with superin-
tendent of police ;

and may refrain
from appearing.

Rule 8. The government advocate shall have the power of calling for explanatory information from the magistrates in regard to any case in which under the preceding rules, it may become his duty to appear, or to consider the propriety of appearing in court. And he may also, where necessary, solicit information on any point of importance connected with the course and circumstances of a trial, from the session judges. C. O. No. 85 of vol. 4. L. P.

Government ad-
voc
on
explanation

1084. The government pleaders at the different sessions courts are instructed by the government advocate invariably to apprise the magistrate of the district, or the officer exercising magisterial powers at an outstation, when any case which has been committed to the sessions from their several stations has been referred by the judge to the sudder court, or having been decided by the judge may have been appealed to the sudder court either by the prisoners themselves in jail or by any party acting on their behalf in the sessions court. The government pleaders at the nizamat adawlut are also instructed in all cases to inform the superintendent of police, the magistrate of the district, or other officer exercising magisterial power, within whose jurisdiction the appealed cases have arisen, of all appeals filed in the sudder court, on notice of the appeal being given to them by the register of the court. Immediately on the receipt of either of the above communications the magistrate, or other officer exercising magisterial powers, is to address the government advocate *direct*, stating the circumstances of the case so referred or appealed, with his opinion as to the importance or otherwise of there being an appearance made before the nizamat adawlut on behalf of the government; and by the same dawk the magistrate or other officer exercising magisterial powers is to forward a copy of his letter to the government advocate to the superintendent of police. All magistrates and other officers exercising magisterial powers are to pay the greatest attention to the calls of the government advocate for information or papers connected with any cases referred or under appeal; and they will be held strictly responsible

for any delay in replying to such requisitions, or any neglect of the rules promulgated for their guidance. C. O. Sup. Pol. *L. P.* No. 5 of 1852.

Form of notice
to be given by the
judge to govern-
ment pleader.

1085. In order that government pleaders may invariably be enabled to act in the mode prescribed by the foregoing rules, the session judge is to issue a notice to the government pleader, in the annexed form, of all cases referred or appealed to the sudder court either by the prisoners themselves or by any parties acting on their behalf in the sessions court, immediately on his making such reference, or forwarding the record of trial on an appeal to the court.

Name of prosecutor and prisoners.	Date of conclusion of trial in the court.	Date of letter of refer- ence if the trial has been referred.	Date of presentation of petition of appeal in the event of an appeal, and date of transmission of appeal record.
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C. O. No. 89 of vol. 4. *L. P.*

SECTION XXII.

OF MOKHITARS AND AGENTS.

1086. The name of the officer attesting powers of attorney is invariably to be signed in full. C. O. No. 63 of vol. 4.

For the pro- secution.

Complaints may
be preferred to the
magistrate by an
in certain
cases.

1087. The attendance and deposition of the complainant is not indispensable in preferring a criminal charge, when sufficient reason can be assigned for his non-attendance. If the complainant is unable to attend in person, or if he were not himself present at the commission of the act complained of, his written plaint, presented by an authorized agent, and corroborated by the deposition on oath, or solemn declaration, of one or more persons present, or otherwise personally informed of the truth of the complaint, is sufficient ground for receiving the same, and for issuing process against the party accused, unless the magistrate see reason for making previous inquiry. (See paras. 334, et seq.) Reg. IX. 1807, sect. 4.

But not unless
substantial reason
be shown for the
absence of the pro-
secutor.

1088. But serious inconvenience having been experienced from the indiscriminate permission allowed to vakeels and agents to conduct such prosecutions under the above rule, it was enacted, that in ordinary cases, individuals having charges of a criminal nature to prefer, should attend in person to institute and conduct the prosecution before the magistrate, and likewise before the sessions court; and that such agents should not be permitted to interfere in the conduct of prosecutions, unless substantial reasons be shown (to be recorded of course in the proceedings of the magistrate) why the prosecutor himself should not attend to carry it on in person. It is the duty of the nizamat adawlut, and of the session judge, to restrain any ill-judged exercise of the discretion thus vested in the magistrate. Reg. III. 1812, sect. 3.

1089. On a trial before the sessions, the prosecutor is to be allowed the option of carrying on the prosecution in person, or by a vakeel duly appointed, excepting in cases in which the Mahomedan law requires the prosecutor to appear in person at the trial of the prisoner. This rule, however, is not meant to prohibit the judges causing prosecutors to attend in person in every case, in which their *vivâ voce* evidence is deemed necessary, provided they are not Mahomedan or Hindoo women of a rank and situation in life, which, according to the customs and prejudices of the country, would render it improper to compel them to appear in a court of justice. *Beng. Reg. IX. 1793, sect. 48. Ced. Prov. Reg. VII. 1803, sect. 16.*

So, before the sessions. But judge may require the attendance of the prosecutor.

1090. All courts, magistrates, and persons exercising the powers of a magistrate, subject to such rules as shall be from time to time made for their guidance by the nizamut adawlut, may allow any prosecution to be conducted by an authorized agent. But this is not to be deemed to dispense with the presence of any prosecutor when the presence of such prosecutor is now by law required. *Act XXXVIII. 1850, sects. 2 and 4.*

Prosecution may be conducted by mokhtar.

1091. Upon a complaint being preferred to a magistrate for any bailable crime or misdemeanor, he is empowered to issue a summons requiring the accused to appear, according to the circumstances of the case, in person or by vakeel to answer the charge. (See para. 346.) *Reg. IX. 1807, sect. 6, cl. 2.*

For the defence.

In bailable cases magistrate may allow the defendant the option of appearing by vakeel.

1092. A session judge may order a magistrate to admit a party to appear and answer by attorney, if he sees sufficient reason for so doing, without calling for the proceedings. *Const. No. 730.*

Judge may order magistrate to admit.

1093. A session judge is empowered to comply in the first instance with applications made to him by parties held to bail for trial at the sessions, to be allowed to attend and plead upon the trial by a vakeel duly constituted, instead of attending in person, when strong and sufficient reason is stated for dispensing with the personal attendance of the party in such cases: provided that the judge may, during the trial, exercise a full discretion, notwithstanding any previous orders, in requiring the personal attendance of the defendant, whenever, on consultation with his law officer, it may appear requisite under the provisions of the Mahomedan law, or generally for the ends of justice. *Reg. VI. 1818, sect. 3, cl. 4.*

the appearance of defendant by vakeel at the sessions; but may subsequently require his attendance.

1094. In all courts and before all magistrates, or persons exercising any of the powers of a magistrate, every person on trial for the commission of any offence is to be admitted to defend himself either personally or by his authorized agent; and, after the close of the case for the prosecution, to make full answer and defence thereto either personally or by his authorized agent. But this is not to be deemed to dispense with the presence of any person on trial for the commission of any offence, when the presence of such accused person is now by law required. *Act XXXVIII. 1850, sects. 1 and 4.*

Every de may defend himself by

but this does not dispense with his

1095. A defendant is bound to appear in person to receive sentence before a magistrate, though he has appeared by attorney, during the progress of the case, to answer the charge and defend himself. And sentence should not be passed in the absence of the defendant. *Reports L. P. 1854, part 1, page 433.*

Defen appear i receive sentence, though he has appeared by tar.

civil court.

1096. The vakeel referred to in the preceding paragraphs need not be one of the established pleaders of the civil court. Const. No. 295.

Who are authorized agents.

1097. In those courts in which any person now has by law the right of employing whomsoever he can employ as counsel or pleader, nothing in this Act is to be deemed to restrict that right; in all other cases those persons only are to be deemed authorized agents within the meaning of this Act who are either advocates of one of the supreme courts of justice established by royal charter; or authorized pleaders of the civil courts of the East India Company; or, by leave of the court, magistrate, or other person before whom the prisoner is on trial, any other person who is employed by the prosecutor or prisoner as his agent. Act XXXVIII. 1850, sect. 3.

Vakeels of civil court may not practice in the foudaree court, except with the sanction of the judge, or on the part of government.

1098. The authorized pleaders of the civil courts are prohibited, without obtaining the previous sanction of the judge, from officiating as agents or mokhtars in any prosecution, trial, or proceeding, before the magistrates or their assistants. This prohibition does not apply to the cases of pleaders who may be employed on the part of government in conducting the prosecution of persons charged with criminal offences, or in the execution of any other duties in the criminal department, which such pleaders may be directed or authorized to perform on the part of government, under the regulations which are now or may hereafter be in force. Reg. XXVII. 1814, sect. 17.

Appeals and miscellaneous cases may be conducted by any agent.

1099. Appellants from the decisions of magistrates are at liberty to employ whom they please to conduct their appeals. So also in cases under Act. IV. 1840.(a) But in every case, whatever persons are so employed, the amount of their fees should be adjusted between them and their constituents, and their remuneration secured before undertaking their business; and they should be given to understand that, if they neglect to do so, no assistance to enforce payment of it afterwards will be given. Const. Nos. 371 and 642.

Remuneration.

It cannot be enforced under Reg. VII. 1819.

1100. Regulation VII. 1819 has no reference to the wages of a mokhtar: it applies to workmen and domestic servants only. Const. No. 770.

General mokhtars.

* v. section 2, chapter 4, "Of

1101. The provisions contained in sections 4 and 6, Reg. IX. 1807, and sect. 2, Reg. II. 1806,* clearly recognize the admission of general mokhtars; but, in admitting or rejecting this description of agent, much must of course be left to the discretion of the local authority according to the particular circumstances of each case. Const. No. 512.

1102. Person holding general mokhtarnamahs may plead in as many courts and cutcherries as are specified therein. Letter of N. A. to Judge of Tirhoot No. 1074, Sept. 7, 1849.

mokh- to be returned.

1103. A general power of attorney may be returned to the party filing, after being attested and acknowledged, at the discretion of the local authority. Const. No. 917.

ed at police thana.

1104. Police darogahs are enjoined, under penalty of dismissal, not to permit any established vakeel or mokhtar to be permanently employed at their thanas on the part of any landholder, farmer, local agent, or other person. But this rule is not meant to preclude the

(a) This construction was held on the provisions of sect. 3, Reg. XV. 1824.

occasional employment of a vakeel, or mokhtar, for any specific purpose, when it may be

r. Reg. XX. 1817, sect. 11, cl. 4.

ice officers are prohibited from employing any mokhtar, or vakeel, at the sta-
 establishment of receiving and transmitting the salaries of the thana
 establishment

Police officers are forbidden to employ mokhtars at the sudder station for official purposes.

the magistrate to employ a

Reg. XX. 1817, sect. 11, cl. 5.

1106. Money deposited in court as payable to a party should never be paid to a vakeel,
 specific in the vakalutnamah: and for any sum paid away in
 personally possible

Payments to.

Const. No. 1360.

1107. A magistrate is competent to refuse to acknowledge a mokhtar in his court, who
 may be proved guilty of any gross misconduct in the execution of his duty in that capacity;
 and one proved act of such misconduct is sufficient to warrant his general rejection. Const.
 Nos. 607 and 809.

Misconduct of.

1108. In a civil court the judge has no authority to prevent parties employing whom
 they please as mokhtar; but in the magistrate's court, where the mokhtar is in appearance
 for a party, and comes into contact with the court, the employment of an individual may be
 interdicted. Letter of N. A. to Judge of 24-Pergunnahs No. 38, January 10, 1854.

Magistrate may dismiss a mokhtar.

1109. A person may appoint another his agent for the management of a suit or criminal
 prosecution, because an individual is sometimes prevented from acting in his own person, in
 consequence of accidental circumstances, such as sickness; and because every person is not
 himself capable of managing business of this nature. So, also, it is lawful to appoint an
 agent for the payment or exaction of rights; but this does not apply to cases of *hudd* or *kisas*,
 for the absence of the principal would give rise to a doubt of the prosecution, which in such
 cases would prevent the infliction of a penalty. An agent may be employed even when the
 principal is present, because every one is not acquainted with the mode of conducting a cri-
 minal prosecution. An accused person, also, may employ an agent to conduct his defence;
 but a confession made by such agent is not admissible against his constituent, because it is
 doubtful whether he has been authorized to make such confession. These are the opinions of
 Haneefah and Mahomed in opposition to Abou Yoosuf; but it is not necessary to examine
 the points of difference between them. A woman, who is not used to appear in public, ought
 to appoint an agent for the management of her cause. The validity of agency, in any busi-
 ness, rests upon two conditions: *first*, that the constituent be himself legally empowered to
 perform the business for the execution of which he appoints another; *secondly*, that the agent
 be of sound understanding, so as to be capable of executing the business to which he is ap-
 pointed.(a)

Mahomedan Law.
 Prosecution.

Defence.

A woman may always employ.
 Validity of agency.

SECTION XXIII.

OF THE FUNCTIONS OF THE SESSION JUDGE.

Appointment. 1110. Whenever the measure is deemed advisable, it is competent to government to invest the civil judges within their divisions with full powers to conduct the duties of the sessions. Reg. VII. 1831, sect. 2.

Oath of office, 1111. Session judges so appointed are to take the oath prescribed for a judge of circuit before such person as government may direct, and are to be guided in the conduct of their duties by the rules previously applicable to commissioners of circuit, subject to the modifications contained in this regulation. Reg. VII. 1831, sect. 3. [The following is the oath which a judge of circuit was required to take by sect. 34, Reg. IX. 1793 (*Ced. Prov.* sect. 5, Reg. VII. 1803): "I, A. B. solemnly swear, that I will truly and faithfully execute the duties of judge of the court of circuit for the division of —; that I will administer justice according to the regulations that have been or may be enacted by the governor general in council, to the best of my ability, knowledge, and judgment, without fear, favour, promise, or hope of reward; and that I will not receive, either directly or indirectly, any present or nuzzur, either in money or in effects of any kind, from any party in any suit or prosecution, or from any person whomsoever on account of any suit or prosecution to be instituted, or which may be depending, or have been decided, in the court of circuit of which I am judge; nor will I knowingly permit any person or persons under my authority, or in my immediate service, to receive, directly or indirectly, any present or nuzzur, either in money or in effects of any kind, from any party in any suit or prosecution, or from any person whomsoever on account of any suit or prosecution to be instituted, or which may be depending, or have been decided, in the said court; nor will I, directly or indirectly, derive any advantage or emolument from my station, excepting such as the orders of government do or may authorize. So help me GOD."]

must be taken, 1112. So long as the law remains in its present state, requiring public servants to make a declaration before entering upon their duties, it is necessary that such declarations should be made in obedience to the law. It is not proper that the acts of public officers should be liable to be called in question by reason of the neglect of what the law regards as an essential form. All declarations should be recorded in the office in which they are made **and recorded, and the fact reported to the court.** so as to be forthcoming in case of need; and the fact should be reported to the court. Such declarations should be made before the officer appointed by law on that behalf, or before any sworn justice of the peace, or any court of civil or criminal justice. C. O. January 6, 1854. L. P.

General duties. 1113. It is competent to the governors of Bengal and of Agra respectively, by an order under the signature of the secretary to government, to transfer any part, or the whole of the duties connected with criminal justice, from any commissioner of circuit to any session judge, **from of** and to define the powers, which shall be exercised by each respectively. Act VII. 1835.

1114. Session judges so appointed are to try every commitment that may be made by the magistrates of their respective jurisdictions, as soon after it is made as may be convenient ; and jail-deliveries for each district are to be held at least once in every month. Reg. VII. 1831, sect. 4.

To try commitments without delay.

1115. The duties of a session judge, in a district to which Act VII. 1835 has been extended, consist in trying all commitments made by the magistrate ; in hearing and disposing of all appeals preferred from orders passed by the magistrate in criminal trials, including the whole progress of a case from the commencement to the date of final sentence ; and in exercising a general superintendence and control over the proceedings of the magistrate in the administration of criminal justice. C. O. No. 233 of vol. 2. This general power has reference only to cases which come before him on appeal or by commitment. He can decide only on the legal accuracy and justice of the orders passed by magisterial officers, who are in other respects subordinate to the authority of the superintendent of police. See paras : 972 and 1127.

Trying commitments
Hearing

Superintending

1116. Session judges so appointed possess all the powers formerly confided to commissioners of circuit, as far as regards the summoning and examination of witnesses, and the passing sentence of acquittal and conviction without reference ; but they are not competent to exercise any authority over the magistrates, or any interference in matters of police.(a) Reg. VII. 1831, sect. 5.

Powers.

The same as those formerly confided to commissioners of circuit.

1117. On the conclusion of the trial or trials, the session judges so appointed are to proceed to pass sentence of conviction or acquittal, or to refer the trial to the nizamut adawlut if required to do so under the rules previously applicable to the commissioners of circuit. Reg. VII. 1831, sect. 6.

On conclusion of trial, to pass sentence, or to refer the case.

1118. The power of a session judge to fine is unrestricted as to amount, except when it is defined by any specific regulation, as in the case of *dhurna* by Reg. VII. 1820. Const. No. 959. This rule is confined to the *Lower Provinces*. C. O. No. 227 of vol. 3. *W. P.*

Power to fine unlimited. *L. P.*

1119. The session judge is to report to the nizamut adawlut every instance, in which it appears to him that the magistrate has been guilty of neglect, or misconduct, in the discharge of his duty. He is also to acquaint the nizamut adawlut whenever the magistrate omits or refuses to obey his orders. *Beng. Reg. IX. 1793, sect. 63. Ced. Prov. Reg. VII. 1803, sect. 30. C. O. No. 233 of vol. 2, para. 3. L. P.*

Miscellaneous duties.

To report misconduct or disobedience on the part of the magistrate.

1120. Session judges are to bring to the notice of the court, for ultimate report to government in serious cases, cases of palpable disregard of the forms of law in the proceedings of a magisterial officer, detected on appeal, or otherwise. Judges are to be held strictly responsible for the proper discharge of this duty. C. O. No. 59 of vol. 4. *L. P.* C. O. Sup. Pol. *L. P.* No. 3 of 1851.

Or any palpable disregard of the forms of law.

1121. The judge is to submit to the nizamut adawlut such rules as may appear to him calculated for the better regulation of the trials of prisoners, the administration of justice,

To propose new rules for the administration of justice.

(a) The commissioners of circuit were vested by cl. 1, sect. 3, Reg. I. 1829, with "all the powers that may be now legally exercised by judges of circuit when holding the sessions of jail delivery, or by the courts of circuit collectively."

tics, or the police. or the police of the country. *Beng. Reg. IX. 1793, sect. 65. Ced. Prov. Reg. VII. 1803, sect. 33.*

Annual report on laws, &c. 1122. The judge is to submit to the nizamut adawlut an annual report, containing such observations as he has made regarding the effect of the present system for administering the criminal laws in the prevention and punishment of crimes ; as well as such other matters as he may think deserving the notice of the court. *Beng. and Ben. Reg. IV. 1797, sect. 12. Ced. Prov. Reg. VII. 1803, sect. 37.*

1123. The session judge is to bring to the notice of the court, whatever he may consider worthy of remark either in the laws in force, or in the instruments for administering them, comprehending such information of the condition of the district under him, as local experience and observation will readily supply, but to convey which the most elaborate figured statements would be inadequate.(a) C. O. No. 98 of vol. 3, para. 11.

Copies of report of the superintendent. 1124. Session judges are to furnish the superintendent of police with copies of such parts of the reports transmitted by them to the nizamut adawlut, as relate to the state of the police, together with copies of the statements reporting the number and nature of the offences committed. C. O. Nos. 243, 251, and 324 of vol. 1 ; and No. 3 of vol. 2.

1125. The conduct of a preliminary investigation is exclusively in the hands of the police officers, who are responsible for it only to the magistrate and the superintendent of police, and not to the judicial authorities. The session judge should bring to the notice of the superintendent of police, any irregularity or want of efficiency on their part in the exercise of police functions, which he may observe during a criminal trial. Reports *L. P.* 1852, part 1, page 1083.

Not to issue general orders. 1126. A session judge is not warranted in issuing instructions of a general nature for the conduct of the magistrate ; that power being expressly reserved to the nizamut adawlut by sect. 3, Reg. X. 1796. Const. No. 204.

The same rules applicable to other officers holding sessions. 1127. The foregoing rules (of this regulation) are applicable to all cases in which any other person, not being the judge of the district, may be directed to hold a trial or sessions within any division, in which he may not have charge of the office of commissioner. Reg. VII. 1831, sect. 11.

Government may appoint another officer to hold the sessions. 1128. It is at all times competent to government to direct any commissioner, or judge, not being the magistrate by whom commitments were made, to hold the sessions of jail delivery, with the powers and authority of a court of circuit, whenever the arrangement appears necessary for the prompt and efficient administration of justice, and circumstances render it inconvenient to appoint such officer to officiate with all the powers of the commissioner.(b) Reg. I. 1829, sect. 5, cl. 2.

(a) The rules regarding periodical reports and statements will be found in appendix D.

(b) In reference to the late appointment of an officer to be additional session judge for the zillahs of 24-Pergunnahs, Hooghly, Nuddea, and East Burdwan, the following instructions were communicated by government to the nizamut adawlut.

“ The primary duty of the additional sessions judge will be to try the commitments of the magistrates and joint-magistrates of the districts above named, including Howrah and Baraset ; and for this purpose he will be expected to visit each

1129. Session judges of those districts in the Western provinces to which outstations are attached are to proceed thither for the purpose of holding jail deliveries, after every second month, where the outstations may be comparatively near, and the means of travelling rapid; or elsewhere, after every quarter; and they will be allowed the usual travelling charge on each occasion. C. O. No. 975, August 2, 1854. *W. P.* When proceeding on circuit, he is to make over charge of the current duties of his office to the principal sudder ameen. C. O. S. D. A. No. 235, February 2, 1855. *W. P.*

tions every other month, or once a quarter, according to distance;

making over charge to principal sudder ameen.

1130. Commissioners of circuit appointed under the provisions of Reg. I. 1829, are authorized and required, without making any previous reference for sanction either to government or to the nizamat adawlut, to hold jail deliveries as often as may be convenient for any of the districts within their divisions, whenever, owing to absence, indisposition, or other cause, the session judge shall have been unable, for a period exceeding one month, to perform that duty; or whenever such judge may be prevented from trying any case or cases by reason of his having made the commitment or commitments in his capacity of magistrate or joint-magistrate, or from any other cause. Reg. VII. 1831, sect. 13, cl. 2.

Commissioners of circuit to hold sessions in the absence of the judge.

1131. Whenever a session judge has been prevented by any of the above causes from holding the sessions of his district for the period of one month, he is to communicate the circumstance to the commissioner of the division, if in the Western provinces; or direct to the nizamat adawlut, if in the Lower provinces; with a view to such arrangements as the emergency may appear to demand. C. O. No. 115 of vol. 2; and No. 7 of vol. 3, para. 6. *L. P.*

Session judge to report if he is unable to hold the sessions.

sudder station, viz: Alipore, Hooghly, Kishnaghur, and Burdwan, once in every three months; relieving the session judges of those zillahs of all sessions trials, except such as they may be directed by the sudder court to take up and dispose of, in consequence of the detention of the additional judge elsewhere, and in order to prevent delay in the administration of justice. These directions may either be issued by the court from time to time on inspection of the returns, or the court may in communication with the judges and additional judge, and after some experience of the working of the new plan, give them general instructions for their guidance in the disposal of sessions cases.

“The additional session judge will, as is at present done by the session judge, try the Baraset and Howrah commitments at the sudder station of the 24-Pergunnahs.

“The sudder court will exercise their discretion in assigning to the additional judge the hearing of criminal appeals (or a portion of them) from the decisions of magistrates and joint-magistrates. It would doubtless be very desirable that all the appeals should be heard by the additional session judge; but the court will of course be guided in this respect by their experience of the amount of sessions business which may press upon him, and his consequent ability or inability to undertake other duties.

“The additional judge will, after communication with the zillah judges, who should be able to spare a portion of their establishment for his assistance, report directly to the government on the establishment which he may consider necessary for the duties of his office. In the meantime he is authorized to entertain temporarily whatever establishment may be requisite for his purposes. He will indent for stationery either through the zillah judges or independently of them as he may find convenient; regarding forms and statements the additional judge will be guided by such instructions as the court may think proper to give him.

“The circuit houses at each station will be placed at the disposal of the additional judge during the terms of his sessions visits. As other officers* are also entitled to the use of these houses, the additional judge will endeavour to time his visits in communication with them, so that there may be no embarrassment regarding priority of occupation.

“The zillah judges and magistrates will be directed to afford to the additional judge on occasion of his circuits all the official accommodation and assistance in their power.”

* Commissioners of revenue and circuit, and executive officers of the division when on duty at stations not their head

If the session duties are reserved to the commissioner.

1132. The several commissioners, in whose divisions the provisions of this regulation may be partially introduced, are also required to try the commitments that may be made by the magistrates of those districts, the session duties of which may be reserved to them, as soon after the commitments are made as may be practicable, consistently with the due performance of their other duties. Reg. VII. 1831, sect. 13, cl. 3.

Cases in which previously concerned.

Session judge is not to try commitments made by him-

1133. No session judge, whether fully appointed or officiating, is on any account to preside at the trial of any case in which the prisoner or prisoners have been committed for trial by himself in his capacity of superintendent of police, magistrate, joint-magistrate, or assistant-magistrate. In all such cases the trial is to be postponed until it can be brought before another judge, or person appointed to officiate as such; and a report of the case is to be made to the nizamut adawlut, who are to determine what provision is to be made for the immediate trial of the case. Reg. IV. 1823, sect. 6.

nor if he has case

1134. In a case of murder in a foreign territory, it appeared that the commissioner, who tried the prisoner, was the officer who had originally applied to government for permission to commit him for trial on the above charge, although he was not actually the committing magistrate. The nizamut adawlut were unanimously of opinion, that the proceedings held on the trial were virtually in contravention of the law, and accordingly quashed them, and ordered the prisoners to be tried *de novo* by a competent officer. N. A. R. vol. 3, page 334.

nor to try appeals from his decisions;

1135. No session judge is to take cognizance of appeals against decisions, or orders, passed by himself in the capacity of magistrate, joint-magistrate, or assistant-magistrate, or in any other capacity. Reg. XXV. 1814, sect. 12, cl. 4.

nor if he has previously committed others in the same case.

1136. A session judge, having previously as magistrate committed several persons in a case, was informed that he should not try another prisoner implicated in the same case in his own magisterial proceedings, but subsequently apprehended and committed by another officer. Const. Nos. 685 and 686.

Judge may try a person committed by himself for per-

1137. It is competent to session judges to try persons committed by themselves as civil judges for perjury or subornation of perjury. Act I. 1848, sect. 4.

and may try, if he made over the case as civil judge to the magistrate, and the latter has committed on his own discretion.

1138. A session judge is competent to try a prisoner committed by a magistrate on his own discretion, in a case sent to the magistrate by the judge, in his civil capacity, to commit or otherwise dispose of as he might think proper. Const. No. 975.

So, the appeal, if he as civil judge made over the case to the magistrate to be punished or not at the discretion of the latter.

1139. A judge in his civil capacity made over a person to the magistrate for resistance to a process issued from the civil court; the magistrate convicted and punished him, and he appealed. The session judge declined to receive the appeal, on the ground that he was a party concerned; but it was held by the nizamut adawlut that as the order of the magistrate was passed on a regular criminal trial, the appeal must under the existing law be heard by the session judge. Const. No. 1033.

When the judge from the above reasons cannot try a commitment, he is to report to government.

1140. Whenever a session judge is prevented from taking up a case, which has occurred within his jurisdiction, in consequence of his having made the commitment as civil judge or magistrate, or from any other cause, he is immediately to report the circumstance to govern-

ment, with a view to such special provision being made for the trial of the case as may be deemed proper. He is, at the same time, to state to which of the neighbouring tribunals the case in question could be most conveniently referred, with advertence to the residence of the parties concerned. C. O. No. 17 of vol. 3.

1141. The trial of such cases, as have been committed and are ready for trial previous to the commencement of the dusserah or the mohurram vacation, should be completed although the vacation supervenes in the course of it. And, during those vacations, the court ought never to be closed for the despatch of criminal business, except on those days only, when a total cessation from all business is necessary and usual. C. O. No. 141 of vol. 2; and No. 8 of vol. 3.

Miscellaneous rules.
How far the
vacations.

1142. The judges are empowered, at their discretion, to employ their head clerks in the following duties :—attesting copies of decrees and other documents granted to parties on stamp or plain paper under the judge's orders :—attesting copies of proceedings sent to the local authorities, and to other districts, under the judge's orders; registering in English the mokhtarnamahs, and preparing them for the judge's attestation. But the head clerk, when entrusted with such duties at the discretion of the judge, is never to attach his signature to any document without its correctness having been previously attested and certified by the head ministerial natives of the judge's court. C. O. No. 91 of vol. 3.

Duties on which
the judge may em-
ploy his head clerk.

1143. Judges applying for leave of absence are enjoined strictly to conform to C. O. S. D. A. dated January 4, 1811, which requires that every application for leave of absence should be accompanied by a statement of business, pending before the officer making it, in all departments. C. O. No. 202 of vol. 2; and C. O. No. 30 of vol. 4. *W. P.*

Application for
of business

1144. Session judges are always, before availing themselves of leave of absence, to prepare the statements of prisoners punished without reference or acquitted by themselves, filling up the columns of explanation and remarks : or they are to furnish the officer in charge of the office with a certificate of the cause of their inability to do so, to be submitted with the statements. C. O. No. 193 of vol. 2.

Before
to
monthly
ments.

1145. A deceased judge having left a decision unsigned, his successor was directed to examine the vakeels of the parties in whose presence the decision was given, and the person who wrote it out, and to compare it with any note in the handwriting of the late judge which might be forthcoming; and, unless the result of the enquiry should lead him to doubt the genuineness of the decision, to sign it, making a short memorandum explaining why it was signed by him. Const. No. 910.

Roobakaree left

1146. Whenever a session judge makes over charge of his office to an officer not authorized to act as judge, he is to call the particular attention of the latter to the following rule, and to certify that he has done so in his letter, reporting the fact to the nizamat adawlut. Whenever the charge of the current duties of session judge, from death, indisposition, or other casualty, devolves to the assistant attached to the court; or whenever an assistant, or other covenanted European officer, by the orders of a competent authority, takes charge of the current duties of the office of session judge, (not being vested by government with the

**Officer in
charge of
current
duties.**

Powers and du-
ties.

full power of judge) such officer is to confine himself to the exercise of such part of the powers of judge as may be indispensably necessary for the immediate execution of processes or orders of the nizamat adawlut, for the issue of warrants under sentences of that court, making returns to such warrants, and the transmission to the court of the proceedings in criminal trials, for the execution of the processes from other courts, or for such other cases of emergency as will not admit of delay. The officer in charge will likewise cause to be prepared and forwarded any statement or reports which the judge may, under the rules in force, be required to submit to the nizamat adawlut, or to government. C. O. No. 159 of vol. 2.

In case of an appeal from the order of a magistrate.

1147. On receipt of a petition for staying execution of any order of a magistrate, against which an appeal has been lodged, the officer holding temporary charge of the session judge's office is immediately to transmit a copy thereof, with a proceeding, to the magistrate's court, in order that that officer, being made acquainted with the purport of such application, may have the opportunity of exercising his discretion in regard to the suspension of his order appealed against, either with or without taking security, until the appeal can be brought to a hearing before the session judge. C. O. No. 38 of vol. 3.

Power to grant leave of absence.

1148. Officers in charge of the current duties may exercise the power of granting leave of absence for a limited term, and when urgently required in cases of emergency not admitting of delay, to the vakeels of the court, and generally to the amlah of the judge's establishment. Const. No. 1242.

SECTION XXIV.

OF THE SESSIONS.

General rules.

Matters of mere form, when connected with a criminal trial on which the character, liberty, and often the life of an individual depends, assume a degree of importance, which, on a superficial view of the subject, they might not appear to possess. The circular orders contain clear and compendious directions on the mode of conducting trials, and a strict adherence to them is deemed essential. C. O. No. 135 of vol. 2.

Mode of distinguishing trials,

1150. Each trial is to be distinguished by the month in which it is held. In districts to which Reg. VII. 1831 has been extended(a) the magistrates are to keep separate calendars for each month, entering the trials thereon in regular order. The heading of trials to prefixed to the record in both English and Persian, should therefore be as follows:

“ COURT OF THE SESSION JUDGE OF ZILLAH.

“ Trial No. 1 of the sessions for the month of ———, 185

“ Case No. 3 of the magistrate's calendar for the month of ———, 185 —.

(a) That is, zillahs in which the duties of the sessions are conducted by a judge, instead of a commissioner of circuit.

رویداد تجویز عدالت سیسن ضاع فلان مقام فلان باجلاس فلان صاحب سیسن جم و روبروی فلان
مولوی عدالت^(a) مقدمه نمبر فلان بابت سیسن ماه فلان مطابق نمبر فلان کلندره صاحب مجسٹریٹ
بابت ماه فلان^(b)

The monthly statements connected with the sessions should, in like manner, be designated by the month, in which the trials entered in them were concluded by sentence or postponed. C. O. No. 108 of vol. 2, and No. 186 of vol. 1. and sessions statements.

1151. The trial of a prisoner having been held in the jail on account of her approaching confinement, the proceedings were quashed, and the session judge was directed to try her *de novo* in the established court house, as soon as she should be sufficiently recovered. N. A. R. vol. 6, page 33. Sessions must be held in the established court house.

1152. The practice of holding more than one trial at the same time is prohibited, as wholly unauthorized by the regulations. C. O. No. 125 of vol. 1. More than one trial not to be held at once.

1153. The trials of prisoners upon distinct charges, especially when the prosecutors are also distinct, should as far as possible be kept separate by the magistrate and the session judge. C. O. No. 2 of vol. 1. Trials on distinct charges to be kept separate.

1154. Persons committed in the same case on different dates, and entered in separate calendars, may be all tried together, and disposed of in the returns as one case. Reports *L. P.* 1854, part 1, page 637. But persons charged with the same offence in different calendars may be tried together.

1155. The proceedings on all criminal trials are to be written in a clear legible hand on paper 12½ inches by 9½, or as nearly that size as may be procurable; a numerical list of the papers, corresponding with the marginal notes of the record, is to be prefixed, and the whole closed by adding an extract from the magistrate's vernacular calendar relating to the case. The nuthee, or bundle of papers composing the trial, is to be firmly connected by a string or tape, passed through the papers on the right hand side towards the top, the ends of which are to be united with wax, and the seal of the court impressed thereon. C. O. No. 54 of vol. 2, para. 2. C. O. No. 2, February 7, 1856. *L. P.* **Proceedings.**
How to be written and filed;

1156. The papers forming the record of the trial are to be entered thereon, in the same order as the proceedings are held, a marginal note being made on each separate paper, descriptive of its nature, and corresponding with the numerical list above mentioned. The record is to be headed *mutatis mutandis* as set forth in the given form,* including a transcript in English and the vernacular of the charge on which the accused is put on his trial, as directed in the final order of commitment. C. O. No. 54 of vol. 2, para. 3. and how to be arranged.

1157. Session judges are to pay particular attention to the orders above cited, and to impress upon the officers of their courts, that the additional degree of labor incident to a more careful arrangement of the papers in each case is trifling in comparison with the objects Judges to pay particular attention to the

(a) In cases tried under Reg. VI. 1832, with the aid of panchayats, assessors, or jurors, the names and designations of such persons employed should be entered in lieu of the Mahomedan law officer. Note to printed circular.

(b) The use of the Persian language having been abolished, Urdu or Bengallee must now be substituted.

contemplated; and is only increased by carelessness in the first instance, as in such cases it is found necessary to return the whole proceedings for amendment. The judge should himself carefully examine each case previous to submitting it to the court. C. O. No. 100 of vol. 2.

Description of
the weapon in cas-
es of personal in-
jury.

1158. In cases of murder, wounding, or other personal injury, a description of the weapon, or other instrument, said to have been used in the perpetration of the act, should be here recorded; including, where such particulars are at all available to fix the intent of the prisoner, the length of the instrument, its general form if not one in common use, its thickness, and weight. C. O. No. 54 of vol. 2, para. 4.

Description of
stolen property re-
covered;

1159. In cases of robbery or theft a description should be entered of any articles laid before the court, as forming part of the plundered or stolen property; specifying the number attached to each article, and where, and under what circumstances, it may have been found. C. O. No. 54 of vol. 2, para 5.

and each article
to be numbered.

1160. The number of each article is to be in accordance with that affixed to it in the chalan, which the police darogah is required to transmit to the magistrate by cl. 20, sect. 16, Reg. XX. 1817. Police officers are to be careful in affixing such number, and magistrates are invariably in their proceedings to describe and number the property according to the same chalan. C. O. No. 276 of vol. 1.

to be
observed in the
conduct of pro-

1161. The proceedings on the trial of prisoners are to be conducted in the following manner. The charge against the prisoner, his confession (which is always to be received with circumspection and tenderness) if he plead guilty; or, if he plead not guilty, the evidence on the part of the prosecutor; the prisoner's defence; and any evidence which he may have to adduce; are to be heard before the law officer, who is to be present during the whole of the trial. *Beng. Reg. IX. 1793, sect. 47. Ced. Prov. Reg. VII. 1803, sect. 15, cl. 1.*

Order to be kept
strictly.

1162. The session judge is to observe strictly the order of proceeding pointed out in the above provision, viz. the charge against the prisoner; his confession or denial; the evidence on the part of the prosecutor; the prisoner's defence; and any evidence he may have to adduce in support thereof. C. O. No. 19 of vol. 1.

Prisoner not to
be examined, nor
his previous con-
fessions recorded,
till after the close
for the

1163. It is irregular in the session judge to enter upon an examination of the prisoner touching confessions stated to have been previously made by him, or other matters, immediately after receiving the charge from the prosecutor. He should confine himself, in the first instance, to taking from the prisoner a plain answer of guilty or not guilty, and then proceed to the examination of the witnesses who are summoned in support of the facts charged against the prisoner; after which, and not before, any confession stated to have been made by the prisoner should be recorded on the proceedings. C. O. No. 193 of vol. 1.

Prosecutor's
statement.

Prisoner's plea.

Evidence for pro-
secution.

Certain papers
to be filed in origi-
with transla-

1164. After the papers above noted, there will follow the prosecutor's deposition; the prisoner's plea of "guilty" or "not guilty" to the charge (which should always be explicitly stated to him in the words prefixed to the record); and then the evidence on the part of the prosecution, in the course of which, if any papers borne on the magistrate's proceedings form part of the proof, as written confessions, inquests, declaration of a dying person, and the like, such papers should be entered on the record of trial in original, and evidence taken thereto;

attested copies being substituted in their stead on the magistrate's proceedings. Translations are to be made and annexed to the originals, where the latter are written in a peculiar or corrupt dialect. C. O. No. 54 of vol. 2, para. 6. C. O. No. 26 of vol. 3, para. 4. *W. P.* C. O. No. 52 of vol. 4. *W. P.*

1165. The session judge should always place a formal and official record of a former conviction of a prisoner on the record of any trial, in which such former conviction may be made the ground of aggravating a sentence. Reports *L. P.* 1851, page 297.

Record of former conviction to be filed, if made ground of aggravation of sentence.

1166. After the deposition of the prosecutor, the prisoner is to be called on to plead "guilty" or "not guilty" to the charge; the nature of the charge having been distinctly explained to him, in this stage of the proceedings no further questions should be addressed to the prisoner. C. O. No. 129 of vol. 2.

Prisoner's plea to charge.

1167. In calling on the prisoner to plead, the judge should be careful that the question addressed to him corresponds exactly with the written charge; and where more than one prisoner may be included in a case, the question should be addressed, separately and distinctly, to each by the judge himself. C. O. No. 135 of vol. 2.

Charge to be stated exactly.

1168. When the session judge, in calling upon a prisoner to plead, omitted to state to him that part of the charge which denoted the aggravating circumstances of the crime, it was held that the prisoner could not be convicted of that part of the charge, to which he was not called on to plead. *N. A. R.* vol. 5, page 162. And where the vernacular calendar charged the prisoner with *razdaree* or privity, while the English calendar charged him as an accessory, it was held that he could be convicted of privity only. Reports *W. P.* 1853, part 2, page 1344.

Importance of being exact.

1169. Although the prisoner pleads "guilty," the court should proceed with the trial in the ordinary course. Const. No. 650.

1170. In cases of murder, or wounding, endangering life, when the body or wound has been inspected by the civil surgeon (as it should be in all practicable cases), the deposition of the surgeon should be invariably taken on oath, instead of merely requiring a written report addressed to the magistrate or judge; and it may be here observed, generally, that no report or paper should be placed on the record, or referred to in *proof* of the charge, unless the same be established by evidence. C. O. No. 54 of vol. 2, para. 7; and No. 42 of vol. 3.

Deposition of geon.

ported by

1171. It is not sufficient to show to the civil surgeon the deposition previously made by him before the magistrate, and to ask him if it contained a correct representation of the circumstances. Every witness should be examined in the sessions court at length *de novo*; a professional witness being at liberty, with permission of the court, to refer to any memoranda made by him at the time for the purpose of refreshing his memory. Reports *W. P.* 1854, part 1, pages 367 and 381.

Surgeon examined

1172. Evidence taken in the magistrate's court is not proof on which a prisoner, committed to the sessions, can be convicted. The guilt of a prisoner made over for trial to the sessions court must be established by evidence taken in that court; and admissions stated to have been made by the accused before the magistrate can be rendered available as proof

Guilt of must be

against him on the trial only by being proved before the session judge in the usual manner. Reports *W. P.* 1852, page 1410; and reports of both courts *passim*.

Facts given in evidence must be proved in the presence of the prisoners.

1173. In a case in which certain prisoners were committed on a charge of being accomplices in a crime, of which some of their associates had been previously convicted, the session judge proceeded entirely upon the record of the former trial. This was held to be insufficient, because the former proceedings, so far as these prisoners were concerned, were *ex parte*. All the facts should be proved in the presence of the prisoners, before they are called on to make a defence. The proceedings were quashed, and the judge was directed to proceed *de novo*. N. A. R. vol. 5, page 17.

1174. The evidence of witnesses for the prosecution in a criminal trial cannot be taken in the absence of the accused, even in proof of his confession. Const. No. 658. N. A. R. vol. 1, page 300.

Witnesses to confessions must always be examined.

1175. The witnesses to confessions should always be examined, whether their evidence appears to be material or not; because all the evidence should be recorded before the prisoners are called upon to defend themselves, and the nature of the defence may render the evidence to the confessions necessary. Reports *L. P.* 1852, part 1, page 823.

Re-examinations.

1176. When witnesses are re-examined, the supplemental deposition should be recorded in the same place with that originally given, for facility of reference. Reports *L. P.* 1853, part 1, page 541.

In case of retrial evidence must be taken *de novo*.

1177. When the nizamat adawlut quashed a commitment and trial for culpable homicide, and directed a re-commitment on the charge of murder, it was held that it was irregular to swear the witnesses to the truth of their former depositions: that the trial on the charge of murder must be complete in itself, and without reference to former proceedings; and that therefore the judge must examine the prosecutor and witnesses over again in detail, and take the defence of the prisoner to the new depositions. Reports *L. P.* 1852, part 2, page 796. Reports *W. P.* 1853, part 1, page 50.

to notice lies in the depositions of the witness.

Foujdaree deposition is not to be read before the witness has given evidence.

1178. The session judge is to be careful to notice on his proceedings any material difference between the depositions of the same witnesses before him, and the magistrate, and is to question the witnesses thereupon, and to record their answers; but the depositions taken before the magistrate are not to be read before the sessions court in the presence of the persons who gave the same, until they have been re-examined before the sessions court. *Beng. and Ben. Reg.* IV. 1797, sect. 7, cl. 7. *Ced. Prov. Reg.* VII. 1803, sect. 18, cl. 6.

1179. It is the duty of the judge to record in the proceedings any such contradiction whether in the evidence of the witness on trial, or as compared with his former deposition before the magistrate. C. O. No. 54 of vol. 2, para. 12.

Magistrate's roobakaree admitting approver to be allowed.

1180. The judge is to annex to the deposition of a witness, giving evidence under the offer of a conditional pardon, the roobakaree of the magistrate in which he has recorded the offer of the pardon, and his reasons for making the offer. C. O. No. 113 of vol. 4; *L. P.* and No. 957, August 2, 1854. *W. P.*

1181. The prisoner is not to be called upon for his final defence, until something has been established against him, of which it is necessary that he should furnish a refutation. N. A. R. vol. 2, page 454.

h
defence, until the
crime charged is
proved.

1182. If the evidence for the prosecution is, in the opinion of the session judge and law officer, clearly insufficient to prove the charge against the prisoner, it would be superfluous to proceed with the defence. If, on the other hand, the witnesses for the prosecution should make any statement, which, supposing it to be credited, might tend to inculcate or criminate the accused person, the trial must be completed in the ordinary way. Const. Nos. 1256, and 1267.

If evidence for
prosecution is in-
sufficient, proceed-
ings to be closed at
once.

1183. It is not within the competence of a judge to decline putting a prisoner on his defence, and taking a futwa from his law officer regarding him, on account of his extreme youth, or other cause. N. A. R. vol. 2, page 310.

But judge must
take defence, if the
charge is proved.

1184. After the close of the evidence for the prosecution, the prisoner is to be called upon for his defence, no questions being addressed to him beyond those necessary to elucidate his meaning; and every thing of the nature of an examination, especially such questions as might lead him to criminate himself, being carefully avoided. And evidence is then to be examined on his behalf. C. O. No. 129 of vol. 2, *W. P.*; and 54 of vol. 2, para. 8.

Prisoner is not
to be examined so
as to criminate
himself.

1185. It is irregular in a session judge to cross-question a prisoner on trial, after taking his defence, with a view of drawing from him answers which might have a tendency to convict him. N. A. R. vol. 2, pages 7, and 220. Reports *W. P.* 1853, part 2, page 1088.

1186. It is irregular in a session judge to enter into any examination of a prisoner as to his confession, beyond his simple avowal or denial of the same. N. A. R. vol. 2, page 185.

Nor cross-ques-
tioned as to former
confession.

1187. The confession of a prisoner is always to be received with circumspection and tenderness. *Beng. Reg.* IX. 1793, sect. 47. *Ced Prov. Reg.* VII. 1803, sect. 15, cl. 1.

Confession to be
tenderly received.

1188. Unless the prisoner deny *in toto* having made *any*, his mofussil or foujdaree confession or examination adduced in evidence against him, though not proved by the testimony of the subscribing witnesses, should be read and explained to him at the time of taking his defence, and his admission or denial of the same entered on the record. It should also be read and explained to the subscribing witnesses. If the subscribing witnesses are unable to prove a confession, the judge may call upon the person by whom it was written, and the police officer, magistrate, or other officer before whom it was made, and by whom it is attested, to depose to any circumstances required to be known connected with it. Const. No. 763. N. A. R. vol. 2, page 351.

Previous con-
fessions to be read
to prisoner, and
witnesses.

The writer of the
confession, and the
officer before whom
it was taken, may
prove it.

1189. It is irregular to cause the mofussil confession of a prisoner to be read over to him at the trial, before the subscribing witnesses to it have been examined. N. A. R. vol. 5, page 54.

1190. The session judge is carefully to examine the subscribing witnesses to foujdaree confessions, so as to ascertain that there has been no deviation from the above rules, and that the confessions were taken under the immediate inspection of the magistrate, and under cir-

Irregularities of
the magistrate or
the p
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cumstances which excluded any improper interference or influence. He is to notice in his proceedings any irregularities of the police officers, which have escaped the animadversion of the magistrate; and to report any transgressions on the part of the latter to the nizamat adawlut. C. O. No. 73 of vol. 1, paras. 10 and 11; and No. 54 of vol. 2, para. 22.

Judge is to examine witnesses for defence, if prisoner has no counsel.

1191. The judge should question the witnesses cited by a prisoner, who is undefended by counsel, in regard to the points to prove which they are called. It is not sufficient to ask them merely what they know in his favour. Reports *L. P.* 1856, part 1, page 168.

All witnesses for the defence must be examined.

1192. The judge cannot decline to examine witnesses for the defence, of whatever nature their evidence may be, on the ground that he could attach no weight to their testimony. N. A. R. vol. 6, page 12. Reports *L. P.* 1852, part 2, page 184.

Witnesses for the prosecution may be re-examined for defence.

1193. It is irregular not to hear witnesses for the defence, on the ground that they have been already heard for the prosecution, as it is clearly at the option of the prisoner to delay putting any questions to them until he has completed his own defence, in order to support which he names such witnesses. N. A. R. vol 2, page 37; vol. 4, page 228.

If prisoner objects to examination of his own witnesses, judge may not examine: and without prisoner's desire he need not examine those cited in the foudaree.

1194. If a prisoner objects to examine his own witnesses on the ground that the prosecutor has tampered with them, the judge ought not to examine them. Const. No. 1203. N. A. R. vol. 5, page 115. And if the prisoner states that he has no witnesses to support his defence, it is unnecessary to examine those whom he has previously cited in the foudaree court. Reports *L. P.* 1852, part 2, page 922.

If prisoner requires witnesses in his defence, he must apply specially for them.

1195. If the prisoner has expressed no desire at the sessions trial that any witnesses should be examined in his behalf, he cannot afterwards plead in appeal that no witnesses were examined in support of his defence. Reports *L. P.* 1852, part 2, page 299.

Due measures

to secure attendance of witnesses for the defence.

1196. When the attendance of witnesses named for the defence can be procured, it is not a sufficient reason for not postponing the case that the plea which they are called for to prove is apparently false. Satisfactory reasons must always be assigned for the absence of such witnesses. Reports *L. P.* 1854, part 1, pages 23 and 129. The judge is required to see that due measures are taken to secure the attendance of witnesses for the defence as well as the prosecution.

If the prisoner names witnesses for the first time in the trial, it is not to

1197. It is unnecessary to postpone a trial in order to obtain the evidence of a witness, who is named by the prisoner in his defence for the first time during the sessions trial. Reports *L. P.* 1852, part 2, page 273. But, in regard to calling for witnesses whom the accused has not previously named, the practice appears to have varied. For example, in Mohurum Bee's case, where the prisoner asked in the sessions court to cite witnesses who could prove that her confessions were extorted from her, and the judge did not send for them, the nizamat adawlut returned the proceedings, and desired him to re-open the case for the purpose of summoning and examining them. [Reports *L. P.* 1853, part 1, page 72.] But in a subsequent trial for murder, when the prisoner pleaded that he had been forced to confess in the mofussil, and that he had been drugged by the burkundazes who took him before the magistrate; and the session judge "did not deem it necessary to summon the witnesses to support or disprove his defence, which was so manifestly false, as he had twice confessed

his guilt, and his own mother and father-in-law both distinctly deposed to his having killed his wife,"—the sudder court "concurred with the session judge that it was unnecessary to summon the witnesses referred to by him, as by Reg. IX. 1796,* only those named at the time of commitment or before the sessions are to be sent for." [Reports *L. P.* 1856, part 1, page 328.] It is to be observed, however, that the declared object of the law referred to is that the fullest opportunity may be given to all prisoners to adduce evidence in support of their innocence.

* v. paras. 457
et seq.

1198. The committing officer can claim no right to send up witnesses, not originally named in the calendar, after the trial has been taken up by the session judge. But if either party, whether prosecutor or defendant, wishes during the course of the trial to produce further evidence, of which, or of the necessity of which, he had no means of obtaining previous information; or which may have been, subsequent to the commitment, discovered or considered requisite; he may be permitted to bring the fact to the notice of the judge, who will, for special reasons, which must be placed on record, decide whether it shall or shall not be admitted. Reports *L. P.* 1854, part 2, page 386.

Neither magis-
trate, nor prosecu-
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can as a right pro-
duce further evi-
dence, but judge
may admit, record-
ing reasons.

1199. It is competent to the session judge, at any stage of the trial before him, to call for further evidence. If further evidence for the prosecution be required, it should ordinarily be called for before the defence is taken, and, if required for the defence, after the defence has been recorded: but there is nothing illegal or irregular in taking fresh evidence at any time before closing the proceedings and taking a futwa from the law officer. Reports *L. P.* 1853, part 1, page 270.

Judge may call
for further evidence
at any stage of the
trial,

See Section of
Postponed Trials.

1200. It is illegal to take further evidence on the part of the prosecution after closing the proceedings and taking a futwa from the law officer. *N. A. R.* vol. 2, page 404.

before the futwa is
recorded;

1201. After the proceedings in a case were closed, and the assessors had delivered a verdict of guilty against one of the prisoners, "unless he could establish his defence," the session judge, instead of directing them to re-consider their verdict, with reference to the irregularity of the finding, postponed the case, took fresh evidence, and called on the assessors to give a fresh verdict regarding this prisoner, who was then found guilty by them. These proceedings were characterized by the court as utterly illegal and irregular; and considering such irregularity fatal to the conviction, they directed the release of the prisoner. If the judge had referred the case under the first verdict of the assessors, the court would have rectified the irregularity by directing him to call upon the assessors for an unconditional verdict; or setting aside the verdict altogether, would have instructed him to complete the proceedings by taking the further evidence. But as he sent up the proceedings completed, the court considered themselves bound to pass sentence. *N. A. R.* vol. 5, page 38.

or the jury have
given in their ver-
dict; without the
authority of the ni-
zamat adawlut.

1202. After the completion of a trial by the session judge, and the reference of the case to the nizamat adawlut, further evidence was submitted by the magistrate calculated to change entirely the features of the case in favor of the prisoner. The court held that it was not necessary to quash the trial; but, cancelling the futwa of the lower court, they directed the session judge to proceed with the case, by taking the fresh evidence, calling upon the

The nizamat
adawlut admitted
further evidence,
after the reference
of the case, by can-
celling the futwa.

prisoner for a fresh defence, and the law officer for another futwa, and disposing of the trial on its merits, as exhibited by the result of the further enquiry. N. A. R. vol. 5, page 40.

If further evidence is taken after close of defence, make

1203. The evidence of certain witnesses for the prosecution having been taken after the prisoner's defence, without his having been called on for a further defence as regarded such testimony, the nizamat adawlut held that the proceedings were informal, and they were returned that the omission might be supplied. N. A. R. vol. 1, page 245; vol. 2, page 481. Such further defence must invariably be taken after fresh evidence for the prosecution, although the position of the prisoners has not been affected thereby. Reports *L. P.* 1854, part 1, page 411.

Trial may be completed in regard to some, and postponed as to others of the prisoners.

1204. In cases where there are several prisoners, and the evidence regarding some of them is completed, but it is necessary to postpone the case in the absence of witnesses summoned on the part of the other prisoners; the judge is competent to exercise his discretion in concluding the trial of the prisoners whose cases are completed, and passing sentence on them, postponing a final decision on that part of the trial only, which affects the prisoners for whom further evidence is required. C. O. No. 302 of vol. 1.

In what cases the personal attendance of the accused may be excused.

* v. § 1296.

1205. Upon general principles, the fitness of requiring the actual personal attendance of the accused in the great majority of cases, which fall under the cognizance of the session courts, is obvious: but in less serious cases circumstances may exist to warrant exception to the rule. If, for example, the accused is a female, who, according to the usages and prejudices of the country, could not with propriety personally attend a court of justice, her personal attendance might be very properly dispensed with. But in the event of a doubt on this point, the question should be referred to the law officer under sect. 54, Reg. IX. 1793.* If the law officer declare the accused warranted by the Mahomedan law, in his application to have his personal attendance dispensed with, the judge should proceed with the trial. On the other hand, if he declare the accused not entitled to the indulgence, or that the determination of the point rests with the judge, as the judiciary delegate of the sovereign, it would be competent to the judge to admit or reject the application as might be deemed just and consistent with proper principle. Const. No. 137.

Parentage of Christian prisoner to be noted.

1206. Whenever a Christian is tried, his parentage and place of birth are to be stated distinctly in the jail delivery statements, or in the letter of reference if the case is referred to the nizamat adawlut. C. O. No. 113 of vol. 2. *L. P.*

Prisoners are to be referred to by their names throughout.

1207. Prisoners are always to be referred to in the depositions of witnesses, and the futwas of the law officers, by their names, and not by the numbers they bear in the calendar. C. O. No. 216 of vol. 3.

Prisoners tried

1208. When prisoners have been tried under false names, but their real names are discovered before the completion of the trial, the judge should designate them in the warrant by the names under which they were arraigned and pleaded, adding their since-discovered real names by an *alias*. Const. No. 1034.

1209. When the age of a prisoner appears to have been incorrectly stated by himself, or in the calendar, the judge should record the conviction at which he and the jury arrive on that point. C. O. No. 105 of vol. 1. Reports *W. P.* 1852, page 1095.

If any doubt as to prisoner's age, judge to record opinion formed by the jury and himself.

1210. Particular attention should be paid to correctness and uniformity in the manner of spelling the names of prisoners in the record of evidence. Where several prisoners bearing the same or similar names are included in one trial, care should be taken, in recording the evidence given by each witness, to specify the name of the father of the person alluded to, whenever the name of any one of them is mentioned. C. O. No. 135 of vol. 2, and No. 2, Feb. 7, 1856. *L. P.*

Uniformity to be observed in spelling the names of prisoners; and father's name to be added, if two prisoners bear the same name.

1211. In writing the native names of men and places, the orthography of the original is to be adhered to as closely as possible. C. O. No. 104 of vol. 2.

Orthography of native names.

1212. After all the evidence for the prosecution and defence has been heard, the law officer (who is to be present during the whole of the trial) is to write at the end of the record of the proceedings the *futwa* or law as applicable to the circumstances of the case, and to attest it with his seal or signature. The judge is attentively to consider such *futwa*, and if it appears to him consonant to natural justice, and also conformable to the Mahomedan law, he is to pass sentence in the terms of the *futwa* (except in cases in which he is expressly directed not to pass sentence), and to issue his warrant to the magistrate for the execution of it without further reference or delay. Provided, however, that in all cases where a prisoner is condemned by such sentence to suffer death, or imprisonment for life, the court is to transmit a copy of the sentence, and of all the papers and proceedings read or recorded during the trial, to the *nizamut adawlut*, and is not to execute such sentence, but is to wait the final sentence of that court.* *Beng. Reg.* IX. 1793, sect. 47. *Ced. Prov. Reg.* VII. 1803, sect. 15, cl. 1.

SENTENCE

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ings held,

tain cases to refer.

* As regards sentences see section "of *futwas* and sentences;" and as regards reports of trials to *sudder court* see section "of trials referred and called for."

1213. A conditional sentence of acquittal cannot be passed, so as to render the prisoner liable to a second trial in the event of further evidence being procurable. *N. A. R.* vol. 5, page 25.

Conditional sentence of acquittal cannot be passed.

1214. A prisoner may be convicted as an accomplice when arraigned as a principal; or of a less offence, when under arraignment for a greater of the same nature and founded on the same facts; but not if the crime established be totally unconnected with that charged against the prisoner. Nor can a conviction of a graver offence be had upon a charge of a less heinous nature; as, when a prisoner had been committed on a charge of "severe wounding," it was held that he could not be convicted of "wounding with intent to murder"; and in this case the court, being of opinion that he ought to have been committed on the latter charge, annulled the former commitment and proceedings on the trial, and ordered him to be committed and tried *de novo* for the offence of "wounding with intent to murder." *N. A. R.* vol. 1, page 257; and vol. 4, page 59.

Conviction as accomplice may be had on commitment as principal; and of less on graver charge; but not for graver on less.

Example.

seq.

1215. So, when the term used in the indictment was *hulakut*, or homicide; and the offence charged was described as manslaughter in the margin of the letter of reference; and it appeared that the prisoner had been irregularly tried on a charge of murder, of which

So, a of murder cannot be had upon a charge of manslaughter.

offence the judge deemed him convicted ; the proceedings were returned with directions that the trial should be held in the mode prescribed for that offence, and that a fresh answer should be taken from the prisoner as to the murderous intent charged, and a fresh futwa from the law officer as to that point. It was not considered necessary to take any new evidence for the prosecution ; but the prisoner was permitted to summon any other witnesses in his own defence. N. A. R. vol. 3, page 188.

So, in no case can prisoner be convicted of a crime to the charge of which he has not pleaded ;

1216. The same principal, viz. that a prisoner cannot be convicted of a crime with which he was not charged, and to which therefore he has not pleaded, although the conviction was founded on the same transaction as that which gave rise to the charge, was acknowledged in the cases of prisoners charged—with forgery, and convicted of fraud ; [N. A. R. vol. 2, page 50.]—with perjury, and convicted of embezzlement ; [N. A. R. vol. 3, page 234.]—with embezzlement, and convicted of obtaining money under false pretences ; [Reports L. P. 1852, part 1, page 112.]—with procuring abortion, and convicted of causing the death of her infant by exposure ; [N. A. R. vol. 3, page 56.]—with theft attended with severe wounding, and convicted of affray ; [N. A. R. vol. 4, page 246.]—with culpable homicide, and convicted of being an accomplice in an affray ; [N. A. R. vol. 5, page 28.]—with murder, and convicted of conspiracy ; [N. A. R. vol. 3, page 50.]—with murder, and convicted of theft attended with murder. [N. A. R. vol. 5, page 53.] So, a conviction of procuring abortion cannot be had on a charge of culpable homicide, unless it be averred that the death was the result of the attempt to procure abortion. [N. A. R. vol. 6, page 277.]—If the facts or nature of the crime proved are different from those on which the prisoner was arraigned, it would be unjust to convict him, because he has had no opportunity of defending himself. [Const. No. 123.]—For the same reason, when a session judge, in calling upon a prisoner to plead, omitted to state to him that part of the charge which denoted the aggravating circumstances of the crime, it was held that the prisoner could be convicted only of that part of the charge to which he was called on to plead. [N. A. R. vol. 5, page 162.]

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1217. But a prisoner charged with the illegal and violent seizure and appropriation of property, was convicted of theft, because the offence proved was essentially the same as that charged. [Reports W. P. 1854, part 1, page 142.] And, on the same principle, a prisoner was convicted of forgery on a charge of conspiracy to defraud by falsifying documents ; [N. A. R. vol. 1, page 365.] and a conviction was had of embezzlement, when the charge was of theft and knowingly retaining stolen property. [N. A. R. vol. 4, page 152.]

Prisoner acquitted on account of erroneous charge, may re-committed on correct charge.

1218. And the discharge of a person without punishment on account of the erroneous framing of the charge, does not exempt him from punishment. He is still liable to be tried for the offence of which he appears to have been guilty. N. A. R. vol. 2, page 50.

on he convicts ;

1219. Where the accused is committed on more than one count, the judge should be careful to specify distinctly in the vernacular proceeding the particular count, the averments of which he conceives to have been established on the trial. C. O. No. 54 of vol. 4. L. P.

1220. When the prisoner is convicted of being an accessory, the judge should state distinctly in the vernacular proceeding and in the English statement whether the conviction is of being accessory before or after the fact. Reports *L. P.* 1852, part 1, page 367.

And if he convicts as accessory, whether as before or after the fact.

1221. If the magistrate has neglected to obey any requisition, which the judge has made to him as being necessary to the due conduct of any pending trial, the judge is at liberty to represent the circumstance to the nizamut adawlut, either in the remarks on the statements of convictions or acquittals, or in a separate letter. Reg. VII. 1831, sect. 9.

trate to obey the requisition of judge.

1222. In like manner, should the judge, in the conduct of a trial, see reason to impute misconduct to any darogah or other subordinate police officer, he is at liberty to certify the same to the commissioner of circuit, for such orders as the latter may deem necessary, intimating to the nizamut adawlut his having made such reference to enable that court to require from the commissioner, should they think proper, a report of what he may have done in pursuance of the reference, and to make a special report on the subject to government, should the circumstances of the case seem to require it. Reg. VII. 1831, sect. 10.

Misconduct of police.

1223. A session judge holding a jail delivery, or the court of nizamut adawlut, may order the dismissal of any native officer convicted of a criminal offence declared punishable by dismissal from office; or, though not so expressly declared, if the conduct of such native officer appears from any proceeding before the sessions court or nizamut adawlut, to be such as to require his removal from the public situation held by him. On the same being notified to the magistrate, or other European public officer, under whom the native officer so dismissed has been employed, it is the duty of the magistrate, or other European officer, to take measures for the appointment of a successor to the vacant office in conformity with the regulations. Reg. XXV. 1814, sect. 15. Reg. XVII. 1816, sect. 7, cl. 8.

The courts of sessions and nizamut adawlut may order the dismissal of any native officer whose conduct appears, from any proceeding, to require his removal.

1224. Under the above provisions, in cases before the sessions court as trials, the session judge is competent to order the dismissal of police officers convicted of any offence, which appears to require their removal from public office. Const. No. 1328.

1225. It is competent to a session judge to fine an officer of the magistrate's establishment guilty of negligence or disrespect while in attendance at the sessions. Const. No. 882.

Judge may punish magistrate's

1226. It is also the duty of the session judge to bring to the notice of the nizamut adawlut any irregularities, which may have marked the conduct of the proceedings in the preliminary investigation of the magistrate or the police. C. O. No. 54 of vol. 2, para. 12. He is also to take notice of any want of observance of the rules laid down for the guidance of police officers in drawing up their reports. Reports *W. P.* 1853, part 2, page 1369.

Judge to notice irregularities.

1227. A session judge was told that it would have been more consistent with judicial usage, if he had abstained from expressing a decided opinion as to the guilty knowledge and complicity of persons, who were not on trial before him. In reporting a trial, a session judge should ordinarily confine himself to the case of the prisoners as it comes before him, and forbear from hazarding conjectures, as to the criminality of individuals, when their conduct has not been impeached by the magistrate, to whose judgment and local experience, in selecting

In reporting a sessions should or be of persons tried

the objects of a criminal prosecution, much latitude should be allowed. Reports *W. P.* part 2, page 531.

Rules for drawing up final roobakaree of sessions trial.

1228. The final roobakaree drawn up at the end of a sessions trial is to be preserved for purposes of record, and should therefore contain sufficient information of the nature of the case for the purposes of future reference. It ought to show on what charges the prisoners were arraigned; the names of all the prisoners; the verdict of the jury; the assent or dissent of the session judge; and the order of punishment, acquittal, or reference to the nizamat adawlut. It should be in the prescribed form, and should be drawn up on a separate paper, which may be preserved when the rest of the record is destroyed. C. O. No. 1128, August 22, 1855. *W. P.*

returned.

1229. The session judge is not to retain the proceedings of the magistrate in trials committed to the sessions, except in particular cases, in which such measure appears essentially necessary, when he may either detain the original proceedings, or require copies. C. O. No. 61 of vol. 1.

Judge to forward abstracts of trials to commissioner who is to send them to magistrate.

1230. The office copies of the session judge's abstracts of trials, both of conviction and of acquittal, are in the *Western Provinces* to be forwarded to the commissioners; and are, after perusal, to be sent by him to the magistrate with strict injunctions to return them to the judge within three days from the date of receipt. Government Order *W. P.* No. 4252, October 17, 1855.

If the magistrate wishes to see the evidence taken before the sessions court.

1231. If in particular cases of trials committed to the sessions, any special grounds exist rendering it desirable, in the opinion of the magistrate, that he should see any part of the evidence which has been taken before the sessions court, either to enable him to follow up his enquiries in the case, or for any other purpose connected with the administration of criminal justice, or of the police of his district, he should state those grounds fully in a report to the session judge, who, on a consideration thereof, will determine on the propriety or otherwise of complying with the application, either by transmitting for the magistrate's perusal transcripts of the depositions required by that officer, or by allowing an officer from his court to attend for the purpose of taking copies of the same. C. O. No. 5 of vol. 3.

Sufficiency of ground of his opinion ;

but not to communicate it to the magistrate.

1232. In cases of acquittal, the judge is required to specify in that column of the statement of acquittals appropriated to remarks, whether he deems the commitment to have been made on sufficient grounds, and after due inquiry into the case by the magistrate; or whether he considers it to have been erroneous or defective: and, in the latter case, he is distinctly and fully to detail the ground on which he has come to such conclusion, mentioning the name of the committing officer. He is not, however, to communicate his sentiments to such officer; but should leave it to the nizamat adawlut to point out such cases as really call for notice. C. O. Nos. 24, 156, and 168 *L. P.* of vol. 2.

If proceedings of magistrate require notice, copy of roobakaree of commitment to be sent.

1233. In such cases, when the commitment appears to have been made on inadequate grounds, and when the proceedings of the magistrate in making the commitment appear to merit the particular notice of the nizamat adawlut, a copy of the magistrate's roobakaree of commitment written upon foolscap paper of English manufacture, is to be forwarded

with the usual sessions statements. C. O. No. 24 of vol. 2 ; and Nos. 36, 50, *L. P.* and 57 of vol. 3.

1234. In all cases of prisoners punished or acquitted without reference, copies of the futwas are to be furnished to the nizamat adawlut. They are to be filed in two separate parcels, in the order in which the prisoners affected by them stand on the statements of prisoners punished without reference and acquitted ; and on the face of each futwa a memorandum is to be written in the vernacular, showing the names of the prisoners, their numbers as they stood in the magistrate's calendar, and their numbers in the respective statements of convictions and acquittals, according to the forms given below. (a) The specific charge, upon which the prisoner has been committed to take his trial, is also to be noted upon the copy of the futwa ; the charge is to be taken from the magistrate's roobakaree of commitment, without any alteration, and written upon the face of the futwa in the same language as the original. If in one case some of the prisoners are acquitted, and some convicted, a copy of the futwa is to be filed with each parcel. C. O. Nos. 263 and 283 of vol. 1 ; No. 78 of vol. 2 ; and No. 25 of vol. 3.

Copies of

once, was are to be forwarded monthly to the nizamat adawlut.

1235. Copies of futwas and verdicts of assessors, or copies of the magistrate's roobakarees of commitments, forwarded with the monthly sessions statements are to be written upon foolscap paper of English manufacture. C. O. No. 50 of vol. 3. *L. P.* The vernacular statement of the verdicts of assessors and jurors is no longer required in the *Western Provinces*. C. O. No. 114 of vol. 4. *W. P.*

Such copies to be written on English foolscap.

1236. Whenever there appears to be sufficient cause for dispensing with the attendance and futwa of the law officer of the sessions court upon a criminal trial, or trials, to be held before such court, it is competent to the executive government for the time being to order the same ; and an official communication of such order by a secretary to government is to be deemed sufficient authority for the trial, or trials, therein referred to, being held before the session judge without the attendance or futwa of the law officer. Reg. I. 1810, sect. 2.

Trials held without law officer.

Futwa may be dispensed with by order of government.

1237. In such cases no sentence is to be passed by the session judge. But the proceedings on the trial, when completed, are to be transmitted, with the opinion of the judge on the evidence and facts established, for the sentence of the nizamat adawlut. Reg. I. 1810, sect. 3.

In such

(a) Form of the memorandum for futwas of conviction.

نمبر اٹامیان در فہرست اٹامیان	نمر فلان کلندره ضلع فلان
کہ بموجب حکم صاحب دورہ سزا یافتند	بابت دورہ فلان سنہ فلان
نمبر فلان	نام اٹامیان

Form of the memorandum for futwas of acquittal.

نمبر اٹامیان در فہرست اٹامیان	نمر فلان کلندره ضلع فلان
کہ بموجب حکم صاحب دورہ رہائی یافتند	بابت دورہ فلان سنہ فلان
نمبر فلان	نام اٹامیان

Questions of Mahomedan law in such cases.

1238. In the event of any question of Mahomedan law arising upon such trials, the same is to be recorded upon the proceedings for the information and decision of the nizamut adawlut. But if the question refer to the competency of a witness, such witness is to be examined, leaving the admission or ultimate rejection of the testimony so given to the consideration of the nizamut adawlut. Reg. 1. 1810, sect. 4.

Authority for holding trial out of ordinary course to be recorded.

1239. In all cases of trials held in any way out of the ordinary course of law, the judge is to record on the proceedings of the trial the original documents authorizing the course adopted (substituting attested copies in their place in the magistrate's nuthee, if they are taken therefrom); and he is invariably to notice the same in his letter accompanying the proceedings on the trial, if referred to the nizamut adawlut. C. O. No. 54 of vol. 2, para. 23.

Judge to note, on the record of trials held without law officer, the law applicable to it.

1240. Session judges, who try a case without the aid of a law officer or assessors, are required to note on the face of the record the Regulation or Act under which the trial is held. C. O. No. 215 of vol. 3. *L. P.*

judge of

1241. It is competent to any court of criminal justice, in which a commissioner of circuit or judge of sessions presides, without the necessity of any special authority from government, to avail itself of the assistance of respectable natives in either of three following ways:

a panchayat,

First, by referring the case, or any point or points in the same, to a panchayat of such persons, who are to carry on their enquiries apart from the court, and report to it the result. The reference to the panchayat and its answer are to be in writing, and are to be filed in the case.

or assessors,

Secondly, by constituting two or more such persons assessors, or members of the court, with a view to the advantages derivable from their observations, particularly in the examination of witnesses. The opinion of each assessor is to be given separately, and discussed; and if any of the assessors, or the authority presiding in the court, desires it, the opinions of the assessors are to be recorded in writing in the case.

or a jury.

Or thirdly, by employing them more nearly as a jury. They are then to attend during the trial of the case; to suggest as it proceeds such points of inquiry as occur to them, the court, if no objection exists, using every endeavour to procure the required information; and after consultation to deliver in their verdict. The mode of selecting the jurors, the number to be employed, and the manner in which their verdict is to be delivered, are left to the discretion of the judge who presides.

In such cases futwa need not be taken; but if not, and the crime be not specifically within the judge's competence, the case is to be referred.

In all trials in which recourse is had to the above provisions, the futwa of the Mahomedan law officer is unnecessary, and may be dispensed with at the option of the court. Provided that whenever the futwa is dispensed with, and the crime of which the prisoner is convicted be one, which the judge is not specifically empowered by the regulations to punish, he is not to proceed to pass sentence, but is to refer the case for the consideration of the nizamut adawlut, stating at length in the proceedings the opinion of the panchayat, assessors, or jury, and his own opinion as to the crime proved, and the nature and extent of the punishment which should be awarded. Reg. VI. 1832, sect. 4, cl. 1.

all such decision in the

1242. It is clearly to be understood, that under all the modes of procedure prescribed above, the decision is vested exclusively in the officer presiding in the court, provided that

the sentence be one which, under the existing regulations, it is within his competency to pass. Reg. VI. 1832, sect. 4, cl. 2.

1243. The condition of reference to the court set forth in the above provisions, viz. the crime of which the prisoner is convicted being one which the judge is not specifically empowered by the regulations to punish, must be held to relate to the nature of the crime; and, since whatever is defined or specified in the regulations to be a crime is specifically punishable by the criminal courts, the session judge is therefore specifically empowered to punish such offences when brought before him in the due course of law. The real object of the legislature in enacting the above provision appears to have been to declare the incompetency of the sessions court, unassisted by a Mahomedan law officer, to declare that to be a crime which is not so declared by the regulations. The law professedly administered is the Mahomedan law, amended and modified by the regulations. Where the amendments are applicable, there can be no difficulty in disposing of trials; but, in the contrary event, an exposition of the Mahomedan law is necessary to pronounce whether the act of the prisoner is punishable or otherwise. The session judge sitting with assessors has not the benefit of such exposition, and hence the necessity and propriety of a reference to the nizamat adawlut. C. O. No. 55 of vol. 3.

Explanation of the above as regards the condition of reference.

1244. Any person, not professing the Mahomedan faith, when brought to trial on a commitment for an offence cognizable under the general regulations, may claim to be exempted from trial under the provisions of the Mahomedan criminal code; and in such case the commissioner of circuit, or judge of sessions, presiding on the trial, shall comply with such requisition, and shall proceed in one of the three modes prescribed above, at the same time dispensing with the futwa of the Mahomedan law officer. Reg. VI. 1832, sect. 5.

Any person, not a Mahomedan, may claim to be tried by a jury, &c.

1245. Trials, in which the religious prejudices of Mahomedans or any other class are concerned, ought in all possible cases to be conducted without the Mahomedan law officer, and with the assistance of a jury under the above provisions. A futwa on any point of Mahomedan law may, if necessary, be required without the attendance of the law officer on the trial. C. O. No. 181 of vol. 2. *W. P.*

Trials involving religious prejudices to be tried by a jury.

1246. The law does not require that the opinion of each assessor should be recorded separately, or indeed that any of them must be recorded in writing, unless particularly so desired by the assessor or the judge. But a roobakaree or written proceeding ought always to be filed in the record of the trial, appointing assessors or jurors, and distinctly stating the clause of the law under which they are appointed, and are to take a part in the trial. And, in the case of assessors, the record of the trial should contain a clear statement that the assessors gave their opinions separately, and that the opinions were discussed, and then recorded at their desire or that of the judge. Reports *L. P.* 1852, part 1, page 60.

The opinions of assessors need not be recorded in writing.

1247. A difference of opinion between the presiding officer and the jury or assessors does not render a reference to the nizamat adawlut necessary; but the presiding officer is competent and required to pass final sentence under such difference of opinion under the same restrictions only as limit the issue of his sentence when he concurs in the verdict. Const. No. 783.

If judge from assessors case need not be referred.

Case begun with law officer cannot be continued with assessors.

In a postponed case if jurors cannot be re-assembled, new jurors to be appointed.

But they must hear the case *ab initio*.

The services of natives in such capacity cannot be compelled.

East Indians may serve as jurors.

From what classes jurors ought to be selected.

be for want of evidence.

1248. A trial having been commenced with the aid of the law officer, the judge cannot call in the aid of a panchayat. Const. No. 835.

1249. In the case of a postponed trial commenced before a jury, where it is impracticable from death or other cause to procure the attendance of all persons composing the jury, new jurors should be appointed in the room of those whose attendance cannot be procured, and the former evidence should be read over to them. Const. No. 828.

1250. But in a case in which the prisoner was tried on five different counts by assessors sitting with the session judge; and after the plea of the prisoner was recorded, and witnesses examined in support of the three first of them, the session judge called in other assessors in consequence of the illness and inability to attend of the assessors who first sat; and in which on the completion of the trial, the verdict on the three first counts was delivered by the first set of assessors, and on the remaining two counts by those who last sat; it was held that the employment of two different sets of assessors, under the circumstances, was illegal. N. A. R. vol. 5, page 87.

1251. No power is given to the judge by the above provisions to compel the attendance of persons, who are reluctant voluntarily to render their services. He is empowered to invite the services of natives as arbitrators, assessors, or jurors, but by no means to compel them. There are always officers of respectability attached to the court, law officers, sudder ameens, or principal sudder ameens, who can be invited to act as assessors, and on whose part there can be no reasonable ground for declining compliance with such an invitation. C. O. No. 127 of vol. 2.

1252. An East Indian, who by reason of his descent is not a British subject within the meaning of the existing laws, is eligible to be employed as a juror or assessor on the trial of a native of India, whether of Hindoo or Mahomedan persuasion, or of persons belonging to the same class as himself. Const. No. 1019.

1253. It is, in the opinion of the court, highly inexpedient to compose a jury entirely of vakeels, and mokhtars, or of less than three persons. C. O. No. 52 of vol. 4, para. 7. *W. P.* The best jurors, if they can read and write, are men from the mofussil, ignorant of the chicanery and practice of the courts. The duty should be made as little irksome as possible; and the leading zumeendars of wealth and local influence should be induced to render assistance on special occasions. C. O. Govt. Bengal, No. 27, July 7, 1855. C. O. No. 18, July 9, 1855. *L. P.*

SECTION XXV.

OF POSTPONED TRIALS.

1254. If the attendance of any witness on the part of the prosecutor or the prisoner, whose evidence the law does not allow to be taken by commission, cannot be procured, or if any witness cannot be found, the judge may postpone the trial (until the next circuit), provided there appears sufficient cause for so doing. If the attendance of such witness cannot then be procured, or if he has not been found, the judge may in like manner postpone the trial a second time. But if the judge and his law officer are of opinion that the evidence of

any witness or witnesses, who are absent, is not necessary, they are to complete the trial without it. *Beng. Reg. IX. 1793, sect. 49. Ced. Prov. Reg. VII. 1803, sect. 17.*

1255. As it may frequently occur, that a trial postponed by one judge for further evidence is concluded before another judge, it is incumbent on the former to record his reasons at large for directing the postponement, with the specific points on which further evidence is required, and any observations upon the credit of the witnesses already examined, or other remarks upon the evidence already taken, which may appear requisite for the information of the latter. C. O. No. 111 of vol. 1.

Judge to record his reasons for postponing.

1256. When a trial is postponed, the cause of postponement should be entered on the proceedings. N. A. R. vol. 6, page 18.

Fact of postponement to be recorded.

1257. When the trial was commenced by one session judge, and all the evidence was recorded before him, except as to an *alibi* pleaded by one prisoner; and the judge considering that this *alibi*, if established, might shake the credibility of the direct evidence against a number of the other prisoners, postponed the trial as respected all those prisoners; and placed on record his reasons for postponement, recording also in the office a full statement of his view of the evidence already taken respecting the prisoners for the information (as he was himself about to leave the station) of the judge who would have to take up the postponed case; and the judge succeeding him took the fresh evidence that had been called for in open court in the presence of the prisoners; and then having read the whole record of evidence previously taken, with the former judge's recorded remarks, proceeded as usual;—the court held that the mode of procedure was strictly legal. N. A. R. vol. 6, page 165.

Mode of procedure, if a trial be commenced by one judge and postponed, subsequently taken by another judge.

1258. There is no rule or order which requires that, in cases of the non-attendance of the prosecutor before the sessions court, the trial must be postponed for two successive sessions, and the prisoner not discharged until the prosecutor fails to attend at a third session. The provisions of the regulations above quoted are expressly applicable to witnesses only; and with regard to them a discretion is vested in the judge to postpone the trial or not, according as he and the law officer are of opinion that the evidence of the absent witnesses is necessary or otherwise. With regard to the case of absent prosecutors, for which there is no express rule in the regulations, a discretion should be exercised by the judge according to the nature and circumstances of each case: if both prosecutor and witnesses are absent from any cause which is not likely to prevent their attendance at a future period, the trial should be postponed, the magistrate being directed to adopt every practicable measure for causing their attendance, and the prisoner be admitted to bail, or kept in custody, as the judge under cl. 2, sect. 9, Reg. IX. 1807 may deem it proper to direct: but if there is no prospect of the future attendance of either prosecutor or witnesses in support of the prosecution, the prisoner should be acquitted, and discharged with or without security, as may appear proper in consideration of the magistrate's proceedings on the commitment. If, however, the prosecutor only is absent, and his witnesses in attendance, the judge should instruct the magistrate to appoint some person on the part of government to conduct the prosecution. A judge on circuit may direct the removal of a trial with the prisoner, prosecutor, and witnesses, to another station of jail delivery, if he see urgent and special grounds for directing such mode of procedure. C. O. No. 199 of vol. 1. Const. Nos. 200 and 256.

Rules for procedure in the absence of the prosecutor, or of both the prosecutor and witnesses.

not to be
d for more
than six months.

1259. No criminal trial is to be postponed by a session judge beyond the session of jail-delivery, which may be held next after the expiration of the period of six months from the date of commitment, except when, for special reasons, the session judge may be of opinion, that it should be again postponed; when he will report the circumstances under which it has already been postponed, and the grounds on which he has formed his opinion, for the orders of the nizamut adawlut. C. O. No. 132 of vol. 2; and No. 45 of rules for session judges in Appendix D.

Judge on circuit
to take up first the
postponed cases;
re from
an ex-
of the
there is
any delay.

1260. At the commencement of each session the magistrate is to lay before the judge a statement of all cases, which have been referred back by the nizamut adawlut for further inquiry or information, as also all trials which have been postponed at the preceding session; and the judge is immediately to proceed on trials of this description, supposing of course the further investigation to have been completed by the magistrate, and the trials to be in every respect ready, in preference to the cases included in the magistrate's regular calendar, forwarding such as are referrible to the nizamut adawlut with the least practicable delay. If the magistrate has not held the further inquiry required, the judge is to call upon him for an explanation of the cause of delay; and in cases referred back by the nizamut, the magistrate's explanation with the judge's opinion of the sufficiency or otherwise of the same is to be forwarded for the information and orders of that court. A similar report is to be made in other cases, when the judge considers it necessary to bring the magistrate's conduct on the occasion under the notice of the court. C. O. Nos. 121 and 153 of vol. 1.

Suggestion for
avoiding delay in
the final disposal of
cases.

1261. A judge on circuit should, whenever practicable, try those cases first, which have had rise at the greatest distance from the sudder station, in order that whenever any more witnesses or inquiries are requisite to complete the trials, there may be time for a reference to the thanadar, before the nearer commitments are finished. C. O. No. 173 of vol. 1.

SECTION XXVI.

OF FUTWAS AND SENTENCES.

Futwa.

May be required
from law officer
though absent.

Magistrate may
in case of

1262. A futwa on any point of Mahomedan law may, if necessary, be required without the attendance of the law officer on the trial. C. O. No. 181 of vol. 2. *W. P.*

1263. In any case of doubt, when the regulations contain no specific enactment on the point in question, the magistrate should take a futwa from the law officer, and proceed in conformity with his exposition of the Mahomedan law. Const. No. 891.

The interference
of the magistrate

per.

1264. It was considered highly improper and unjustifiable in a magistrate to direct the government pleader to communicate with the law officer, over whom, in his capacity of law officer of a court of circuit, he had no control, on a matter relating to a futwa delivered in a trial before the court of circuit. Const. No. 631.

The law officer
is to specify the
crime of which the

1265. Law officers are to be careful to specify in their futwas the crime, which they consider to be established against a prisoner declared liable to punishment, whether the

conviction be founded on full legal proof, or on presumptive evidence; and to use the proper term, which has been appropriated in the Mahomedan law, or by usage, to designate the offence of which the prisoner is convicted. As, for instance, the crime of robbery should not be denominated *gharutguree*, as that is an ambiguous term which might be applied to acts of plundering distinct from robbery. C. O. Nos. 101 and 104 of vol. 1.

prisoner is convicted; and to use the proper term.

1266. The judge should always require a more specific futwa from the law officer as to the nature and degree of *shoobuh* established against a prisoner, whenever the original futwa in the case is doubtfully expressed. C. O. No. 117 of vol. 1.

Law officer to specify the degree of presumption.

1267. A futwa convicting upon strong presumption (*zun-i-ghalib* or *shoobuh-i-cuvvee*) is a futwa of conviction: and a session judge concurring in such conviction in a case of burglary or theft attended with murder, or wounding or corporal injury endangering life, must pass sentence of 39 stripes and imprisonment in transportation for life, and refer the trial to the nizamut adawlut, suspending the issue of his sentence. Const. No. 558.

A futwa of strong presumption is a futwa of conviction.

1268. A law officer having declared in his futwa, as a ground for the acquittal of a prisoner, that he might have concealed his knowledge of a dacoity from fear, and that it was inexpedient to punish him, lest it should deter other offenders from giving information, the nizamut adawlut held that he had exceeded his duty, and that he should not have referred to matters having no connection with Mahomedan law. N. A. R. vol. 2, page 142.

Law officer may not refer to matters having no connection with Mahomedan law;

1269. In a trial for perjury, it was held that the futwa of the law officer, convicting the prisoners of different degrees of guilt and consequently awarding a different amount of punishment to each, was not objectionable on that score; neither was it impugnable on the ground of its specifying *tazeer* with *tusheer* as the nature of the penalty incurred, inasmuch as by the Mahomedan law *tusheer* forms part of the punishment of perjury. N. A. R. vol. 5, page 58.

but may define the different guilt of t

scribed by Maho-

1270. On trials for murder, the law officers are to deliver their futwa, or law opinions, upon the case according to the doctrines of Yoosuf and Mahomed. *Beng. Reg. IX. 1793*, sect. 50. *Ced. Prov. Reg. VII. 1803*, sect. 19.

In cases of der, futwas to be given according to the two disciples.

1271. Under the Mahomedan law a futwa of death by *seasut* cannot be pronounced on any but a murderer, though some authorities recognize, in abstract terms, the right of the ruling power to extirpate evil doers generally. N. A. R. vol. 2, page 418.

A futwa of death by *seasut* cannot be pronounced on but a murderer.

1272. In all sentences of punishment passed by the sessions court, the judge is to transmit to the magistrate, with the warrant for the execution of the sentence, a copy of the futwa delivered by his law officer: and, in the case of sentences passed by the nizamut adawlut, a copy of the futwa of the law officers of that court. C. O. No. 185 of vol. 1.

Copy of conviction to be sent to magistrate.

1273. The law officer of the sessions court is always to be furnished with a copy of any futwa delivered by the law officers of the nizamut adawlut in cases referred to that court. C. O. No. 101 of vol. 1.

Copy of futwa of law officers of nizamut to be sent to law officer of sessions court.

1274. A session judge has no authority to alter his sentence once passed; he must report the case for the consideration and orders of the nizamut adawlut. Const. Nos. 629 and 643.

Sentences, character of. Sentence once passed cannot be altered.

Sentence to be passed in the most public manner.

1275. The session judges should invariably make it a rule to pass sentence upon prisoners in the most public manner, and to explain to them the enormity of their crimes; and they should take the opportunities thus presented to them in crowded courts of explaining the provisions of such penal enactments, as may have been recently passed by the government, and are but imperfectly known or understood by the community. C. O. No. 160 of vol. 1.

The regulations supersede Mahomedan law.

1276. In cases where a stated penalty is prescribed for an offence, as well by the regulations as by the Mahomedan law, the provisions of the latter are superseded. N. A. R. vol. 1, page 262.

A promise not to prosecute does not bar a capital sentence.

1277. A promise made by the prosecutor not to prosecute was not considered sufficient to bar a capital sentence in a case of murder, as such promise did not affect the credibility of the evidence generally. N. A. R. vol. 2, page 96: and vol. 3, page 69.

Capital sentence not usual, if body be not found.

1278. It is not usual to pass sentence of death, when the body of the murdered person has not been found; but a capital sentence has been passed when the fact of his death is well established, and the disposal of the body satisfactorily accounted for. Reports *L. P.* 1851, page 171; 1852, part 2, page 893; and 1856, part 1, page 830.

The punishment of mutilation is not to be adjudged: rules for commutation.

1279. No criminal is to suffer the punishment of mutilation. If a prisoner is sentenced, in conformity with the futwa of the law officer, to lose two limbs, instead of being made to undergo such punishment, he is to be imprisoned and kept to hard labor for fourteen years; and if any prisoner is so sentenced to lose one limb, he is, in lieu of such punishment, to be imprisoned and kept to hard labor for seven years. The judge, accordingly, when any prisoner is sentenced to suffer mutilation, is to commute such punishment for imprisonment and hard labor for the term above prescribed, and to issue his warrant to the magistrate for that purpose. *Beng. Reg.* IX. 1793, sect. 51. *Ced. Prov. Reg.* VII. 1803, sects. 20 and 21.

may exempt from labor.

1280. A session judge may insert an exemption from hard labor in the warrants issued by him to the magistrate in cases wherein, on consideration of the rank or situation in life of any person sentenced to imprisonment, he considers him to be an improper subject for hard labor. C. O. No. 44 of vol. 1.

If judge tries case within the competence of the magistrate, he should confine his award within the limits prescribed to the latter.

1281. When the session judge quashed a conviction by the magistrate on the ground that the offence charged was beyond his competence, and directed the commitment of the prisoner to the sessions, when in fact the magistrate was quite competent to dispose of the case himself, the court reduced the order of the sessions court by re-affirming the order of the magistrate. Reports *L. P.* 1852, part 1, page 211. See also para. 1005.

The measure of the sentence should not depend on the fullness or incompleteness of the proof.

1282. In a trial for murder the session judge recommended a sentence of 14 years' imprisonment. The court observed that the reason for proposing a punishment so disproportionate to the offence was not apparent, unless the judge had suffered misgivings of the prisoner's guilt to qualify the measure of the sentence. Such practice is not to be justified on any sound principle. Incompleteness of proof of guilt does not render a prisoner an object of lighter punishment than ordinary; it entitles him to his unconditional release. Reports *W. P.* 1851, page 92. A doubt regarding the trustworthiness of the evidence

may be a reason for its total rejection; but is no ground for a mitigation of punishment. Reports *W. P.* 1856, part 1, page 122.

1283. Whenever a session judge proposes a sentence of perpetual imprisonment in the Alipore jail, he is to record his reasons for not recommending a sentence of transportation for life. Under C. O. No. 130 of vol. 3, *L. P.* the judge was directed invariably to recommend transportation for life instead of imprisonment for life; but this rule is no longer required to be observed, in consequence of the enactment of Act XIV. 1844, which authorizes a single judge of the sudder court to pass sentence of transportation beyond sea for life against a prisoner recommended to be imprisoned for life. C. O. No. 229 of vol. 3. *L. P.*

In sentences of perpetual imprisonment, the judge is to recommend transportation for life.

1284. On trial, the session judge is attentively to consider the futwa, placed on record by the law officer, and if it appears to him consonant to natural justice, and also conformable to the Mahomedan law, he is to pass sentence in the terms of the futwa (except in cases in which he is expressly directed not to pass sentence) and to issue his warrant to the magistrate for the execution of it without further reference or delay. Provided, however, that in all cases where a prisoner is condemned by such sentence to suffer death, or imprisonment for life, the judge is to transmit a copy of the sentence, and of all the papers and proceedings read or recorded during the trial to the nizamut adawlut, and is not to execute such sentence, but to wait the final sentence of that court. *Beng. Reg.* IX. 1793, sect. 47. *Ced. Prov. Reg.* VII. 1803, sect. 15, cl. 1.

Sentences, mode of, and referrible trials.

Sentence to be

If futwa death, or imprisonment for life, c. to be referred.

1285. It is competent to a session judge to refer to the nizamut adawlut any trial in which he considers the sentence, he is empowered to pass, inadequate to the guilt of the prisoner, anything in the existing regulations to the contrary notwithstanding. Act XXXI. 1841, sect. 6. *Reg.* VI. 1831, sect. 12. In such case he is not to pass sentence. Reports *W. P.* 1854, part 2, page 747.

Judge may refer any case in which he considers the sentence within his power.

1286. When the judge disapproves of any part of the proceedings held on a trial, or of the futwa delivered by the law officer, he is not to pass sentence in such cases, but is to complete the trial, and transmit to the nizamut adawlut a copy of all the proceedings, and the futwa of the law officer, with a separate letter stating the grounds of his disapproval, and wait the sentence of that court. *Beng. Reg.* IX. 1793, sect. 53. *Ced. Prov. Reg.* VII. 1803, sect. 22.

proceedings, or of the futwa, he is not to pass sentence, but to refer.

1287. In a case, in which the futwa convicted the prisoners of *shibeh-umd* and declared them liable to *deyut*, the session judge, considering the prisoners guilty of aggravated culpable homicide, referred the case. The nizamut adawlut held that the common acceptance of the term *shibeh-umd* is culpable homicide; and that the difference of opinion in regard to the aggravation was not a legitimate ground of reference. *N. A. R.* vol. 5, page 63.

A difference of opinion as to the aggravation of an offence is not a ground of reference.

1288. It is not a legitimate ground of reference that the judge and law officer differ in regard to the degree of guilt of the prisoners, as no distinction between principals and accomplices is recognized in the regulations, accomplices being liable to the same punishment as principals. Reports *L. P.* 1852, part 1, page 394.

Difference between judge and law officer as to degree of guilt no ground of reference.

1289. In a case of dacoity attended with murder, in which the principals had been previously convicted and sentenced by the nizamut adawlut it was held unneces-

Judge may sentence persons convicted of privacy,

the principals having been already sentenced by the nizamat.

Recapitulation of referrible trials.

sary to refer the trial of certain accomplices convicted of privity only. N. A. R. vol. 5, page 17.

1290. Under the above rules the sessions courts are to transmit to the nizamat adawlut all trials, in which the prisoner or prisoners are convicted and liable to a sentence of perpetual imprisonment, or death; as well as in all cases, wherein the judge disapproves the futwa given by the law officer, and has not been expressly authorized by this or any other regulation to pass sentence, notwithstanding such futwa, either for the punishment of the prisoner, or for his acquittal and discharge either with or without security. Reg. LIII. 1803, sect. 6, cl. 1. So, if the sentence within the competence of the judge appears inadequate. [para. 1285.] And other grounds of reference will be found below:—if the judge differs from the law officer on a point not provided for in the regulations; [para. 1295.]—or regarding the exposition of a point of law; [para. 1296.]—or if the law officer rejects material evidence; [paras. 1297 and 1298.]—or if the law officer acquits and judge convicts; [para. 1300.]—or if the judge convicts on one count, and the law officer on another. [para. 1301.] So, if the futwa is dispensed with, and the crime of which the prisoner is convicted be one, which the judge is not specially empowered by the regulations to punish; [para. 1312.]—as in a case of fraud. [Reports *W. P.* 1851, page 25.]

In what trials referred the judge is not to pass sentence;

* *Reports W. P.* 1854, part 2, page 747.

and in what cases he is to pass sentence;

but such sentence is not final in referrible cases.

So, when an accomplice is convicted, in a case referred as to the principal;

but accomplice, if acquitted, to be released at once, although case referred.

If the session judge differs from law officer as to some of the prison-

1291. In trials referrible to the nizamat adawlut if the judge disapprove the futwa given by the law officer; or if the prisoner or prisoners convicted, or any of the prisoners convicted on the same trial, be liable to a sentence of death; [or if he considers the sentence, which he is empowered to pass, inadequate to the guilt of the prisoner;]* the judge is not to pass any sentence (except for the acquittal and discharge of any prisoners not convicted), but is to transmit the trial, with his opinion thereupon, for the sentence of the nizamat adawlut. If the judge concur with the law officer in the conviction of the prisoner, or prisoners, and none of them be liable to sentence of death, the judge is to pass sentence on the prisoner or prisoners so convicted as directed above. But such sentences, in all trials referrible to the nizamat adawlut are not to be deemed final, nor is any warrant to be issued for carrying the same into execution, until they be confirmed by the nizamat adawlut. Moreover, whenever the trial of a principal in any crime may be referred for the sentence or confirmation of the nizamat adawlut whether under the present or any other regulation; and an accomplice in the same crime has been brought to trial and convicted at the same time as the principal; the session judge is not to carry into execution his sentence upon the accomplice so convicted; but is to wait the confirmation or final sentence of the nizamat adawlut as well respecting the accomplice as the principal.(a) Provided, however, that this restriction be not understood to prevent the judge from passing a final sentence of acquittal upon any prisoners charged as accomplices, whom he acquits of such charge, in concurrence with the law officer; or from directing the release of any prisoners so acquitted, notwithstanding the reference of the trial of the principal to the nizamat adawlut. Reg. LIII. 1803, sect. 6, cl. 2.

1292. Whenever a criminal trial is referrible to the nizamat adawlut by reason of the session judge differing in opinion with his law officer as to the conviction or acquittal of one

(a) Under this provision the session judge has no discretion to convict and sentence an accomplice, because the principal is not on trial, in a case which is necessarily referrible to the sudder court, as in murder. Reports *L. P.* 1854, part 2, page 725.

or more prisoners included in the same trial; the sentence in which, in regard to the other prisoners, is within his competence under the regulations in force; it is necessary for the nizamat adawlut to revise only such parts of the proceedings on the trial as relate to the prisoner or prisoners in respect to whom the reference is made. In such cases therefore the session judge is required to pass such sentence as he deems just and proper, and within his competence, in regard to those prisoners whom he convicts or acquits in concurrence with the futwa of his law officer: and in his reference to the nizamat adawlut regarding any other prisoners included in the same trial, he is enjoined to state specifically his opinion on the guilt or innocence of the prisoners, with the grounds of his differing from the futwa; as also to point out in his report, accompanying the trial, those parts of the proceedings or evidence which may affect the prisoners, in respect to whom the case is referred, for the consideration and sentence of the nizamat adawlut.(a) Reg. IX. 1831, sect. 4, cl. 3.

ers, he is to pass sentence on those only regarding whom he concurs.

1293. In such cases the session judge is to suspend execution of any sentence of punishment which he passes in concurrence with the law officer, until the final sentence or orders of the nizamat adawlut have been received upon the trial referred to that court. Nothing in this regulation is intended to preclude the nizamat adawlut from revising the whole proceedings in the cases in question, if there appear sufficient grounds for so doing. Reg. IX. 1831, sect. 4, cl. 6.

But such sentence is not to be executed until the receipt of the orders of the nizamat; who may revise the whole proceedings.

1294. Under the above provisions a session judge ought in all cases, in which he concurs with his law officer in the conviction of any of the prisoners, to pass sentence upon such prisoners, but to suspend the execution thereof, until he receives the final sentence or orders of the nizamat adawlut upon the whole trial. In a case wherein the judge convicting the prisoners neglected to do this, the proceedings were returned with directions to pass sentence, and to re-submit the trial for the orders of the court in the matter of those prisoners, in whose acquittal he had not concurred with the futwa of his law officer. In another case when the judge acquitted one prisoner in opposition to the futwa, but did not pass sentence on the others in whose conviction he concurred, the nizamat agreed in the acquittal of the former, and ordered his immediate discharge, but directed the judge to dispose of the rest of the prisoners. N. A. R. vol. 4, page 330; and vol. 5, page 139.

If judge refers

whose conviction he agrees, the proceedings are returned by the nizamat.

1295. In a case in which the law officer convicted a prisoner of the act charged, but declared him not liable to any punishment, the nizamat adawlut held that the judge could not pass sentence of punishment; and that all trials must be referred to the nizamat adawlut, wherein the judge differs from the futwa of the law officer on any other grounds than those especially provided for in the regulations. N. A. R. vol. 3, page 230.

If the judge and law officer differ on any point not provided for in the regulations.

1296. The session judge is to refer to his law officer all questions relating to points of law, that may arise during the course of any trial; and respecting which no specific rules have been enacted by the governor general in council; and is to regulate his proceedings by the opinions which are delivered by such officer. Where such opinion appears to the judge contrary to the principles of natural justice, or to the Mahomedan law, he is nevertheless

Questions of law arising during the

to be case to

(a) The same rule was prescribed by Const. No. 484, dated June 6, 1828, "under the regulations at large, and particularly with reference to cl. 2, sect. 6, Reg. LIII. 1808," which is given above in para. 1291.

(in cases not provided for by the regulations) to be guided by them; and after completing the trial, and obtaining the futwa of the law officer upon the case, he is, without passing sentence upon it, to transmit the proceedings and futwa to the nizamut adawlut, with a separate letter stating his objections to such opinions or futwa, and to wait the sentence of that court.(a) *Beng. Reg. IX. 1793, sect. 54. Ced. Prov. Reg. VII. 1803, sect. 23.*

Religious persuasion of witnesses not to invalidate their testimony. If law officer rejects, sentence is not to be passed, but case referred.

1297. The religious persuasion of witnesses is not to be considered as a bar to the conviction or condemnation of a prisoner; but in cases in which the evidence given on a trial would be deemed incompetent by the Mahomedan law, solely on the ground of the persons giving such evidence not professing the Mahomedan religion, the law officer is to be required to declare what would have been his futwa, supposing such witnesses had been Mahomedans. The judge is not to pass sentence in such cases, but is to transmit the record of the trial, with the futwa directed to be required from the law officer, to the nizamut adawlut, which court, provided they approve of the proceedings held on the trial, are to pass such sentence as they would have passed, had such witnesses been Mahomedans. *Beng. Reg. IX. 1793, sect. 56. Ced. Prov. Reg. VII. 1803, sect. 25.*

No, if law officer

upon

1298. If the evidence of a witness on a criminal trial before a sessions court is declared by the Mahomedan law officer inadmissible, on the ground of the witness being a police officer, or an officer of government of any description; or on any other ground of exception in the Mahomedan rules of evidence, which appear to the judge unreasonable and insufficient; the judge is to cause the examination of the witness to be taken, notwithstanding the exception stated by the law officer; and is to require the latter, on the completion of the trial, to declare in his futwa the sentence to which the prisoner would have been liable, if the evidence of the witness or witnesses objected to had been admissible under the provisions of the Mahomedan law. In such cases, however, if the conviction of the prisoner depend exclusively or principally upon the evidence of the witness or witnesses objected to by the law officer, the judge is not to pass any sentence; but is to refer the trial to the nizamut adawlut; which court, after taking a futwa from its law officer, is empowered to pass such sentence as may be deemed just and proper, under the regulations in force. *Reg. XVII. 1817, sect. 5.*

Example.

1299. Under the above rule, in a case in which the conviction of a prisoner rested principally upon the evidence of two females, whose testimony the law officer considered insufficient for conviction, it was held incumbent on the session judge to refer the case for the orders of the nizamut adawlut. *Const. No. 1045.*

If the law officer and the convicts, is not to, but case referred.

1300. When a person charged with a criminal offence, and brought to trial before a sessions court, is acquitted of the charge by the futwa of the Mahomedan law officer present at the trial, and the judge before whom the trial is held, on full consideration of the evidence, and of all the circumstances of the case, is of opinion that the proof against the prisoner, whether founded on his free and voluntary confession, or on the testimony of credible witnesses, or on circumstances of strong presumption, is sufficient to convict the prisoner of

(a) If the session judge considers the prisoner guilty of the charge preferred against him, but doubts whether he can be convicted under the law, it is the practice for him to refer the case for the final orders of the sudder court, with a full report, stating his own opinion on any points of law arising therein regarding which he is in doubt.

the whole, or any part of the charge, so as to render him a proper object of punishment, the judge is not to pass any sentence; but is, as directed by the regulations in all cases wherein a judge disapproves of the futwa of the law officer, to transmit without delay the whole of the proceedings on the commitment and trial, with the futwa of the law officer, to the nizamat adawlut; and is to state in a letter to that court the specific crime or crimes, which he considers established against the prisoner. Reg. XVII. 1817, sect. 2.

1301. In the event of a prisoner committed on two counts being convicted on only one count by the session judge, and only on the other count by the law officer, the judge is not competent to pass sentence, but should refer the trial to the nizamat adawlut. Const. No. 971.

So, if judge convicts on only one count, and law officer only on the other.

1302. In a case of conviction by the law officer of robbery with attempt to murder, the trial must necessarily be referred to the nizamat adawlut, whether the judge concurs in or dissents from the futwa. N. A. R. vol. 2, page 264.

Examples of referrible trials.

1303. All cases of burglary attended with corporal injury in such degree as to endanger life must be referred for the final orders of the nizamat adawlut, under cl. 4, sect. 8, Reg. XVII. 1817. N. A. R. vol. 4, page 284.

1304. Under the provisions of Reg. XVI. 1825, the case of a chokeedar convicted of dacoity is not necessarily referrible to the nizamat adawlut. N. A. R. vol. 5, page 68.

Examples of trials not referrible.

1305. A conviction on a charge of administering intoxicating drugs is not necessarily referrible to the nizamat adawlut. The provisions of cl. 4, sect. 8, Reg. XVII. 1817 refer to persons guilty of administering drugs of such a nature as to endanger life. N. A. R. vol. 5, page 121. C. O. No. 64 of vol. 3.

1306. A session judge, concurring with the assessors in a verdict of justifiable homicide, referred the trial to the nizamat adawlut, because the prisoner had concealed the body of the deceased. This, besides that it had formed no portion of the charge, was deemed an insufficient ground of reference. N. A. R. vol. 6, page 78.

ni is

the body.

1307. In all trials, wherein the Mahomedan law officer considers the prisoner liable to discretionary punishment (*tazeer*, *acoobut*, or *seasut*), his futwa is to declare the same generally, with a statement of the grounds on which the prisoner is adjudged subject to discretionary punishment; leaving the measure of punishment in such cases to be determined by the session judge before whom the trial is held, or by the court of nizamat adawlut, under the provisions contained in this or any other regulation. Reg. LIII. 1803, sect 2, cl. 1.

Discretionary punishment.

Futwa to grounds of tion, but leave measure punishment to the judge.

1308. If the crime, for which the prisoner is declared liable to discretionary punishment, in such cases, has been specifically provided for by any existing regulation, denouncing the penalty to be adjudged on proof of the commission of such crime; and the judge before whom the trial is held considers the crime to have been established against the prisoner, whether by his free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence; he is to sentence the prisoner to suffer the punishment for such crime prescribed by the regulations; or, if the case be referrible to the nizamat adawlut, to transmit the trial, with his opinion thereupon, to that court. Reg. LIII. 1803, sect, 2, cl. 2.

Sentence to be passed, if the crime has been provided for by any regulation.

If the crime has
but specifically by
the Mahomedan
law; and a sen-
of *hudd* or *kisas* is
barred by a defect
in the evidence; a
is to

1309. If the crime, for which the prisoner is declared liable to discretionary punishment, has not been specifically provided for by any regulation denouncing the penalty to be adjudged on proof of the commission of it; but is such as would have subjected the prisoner to the specific penalty of *hudd* or *kisas*, provided by the Mahomedan law, if he had been convicted by full legal evidence; and the futwa of the law officer declares him liable to discretionary punishment in consequence of the evidence not being such as the Mahomedan laws requires for a sentence of *hudd* or *kisas*, though sufficient to convict the prisoner on strong presumptive proof or violent presumption (*ghalib-oo-zun*); the judge before whom the trial is held, provided he concurs in the conviction of the prisoner, is to require the law officer to declare by a second futwa to what specific punishment (of *hudd* or *kisas*) the prisoner would have been liable under the Mahomedan law, if he had been convicted by full legal evidence; and is to proceed thereupon to pass sentence according to such second futwa; (commuting the punishment if any regulation requires it;) or, if the case be referrible to the nizamat adawlut, he is to transmit the trial with his opinion to that court. Reg. LIII. 1803, sect. 2, cl. 3.

So, if the crime
has not been pro-
vided for by any
regulation, and
hudd and *kisas* are
barred by a legal
exception, not af-
fecting the nature
of the offence, and
repugnant to jus-
tice.

1310. The judge before whom the trial is held, is to proceed in like manner as directed in the preceding clause, when the crime of which the prisoner is convicted (whether upon full legal evidence, or upon strong presumptive proof) has not been specifically provided for by any regulation; but would subject the prisoner to the specific penalty of *hudd* or *kisas* provided by the Mahomedan law, if the sentence against him for such penalty were not barred by some special exception, or scrupulous distinction (*shoobah*), not affecting the nature and criminality of the offence, and evidently repugnant to the principles of equal justice, in consequence of which bar to a judgment for the specific penalty the prisoner is declared liable to discretionary punishment. In such cases the law officer is to declare by a second futwa to what punishment the prisoner would have been liable under the Mahomedan law for the crime committed by him, if the special exception or distinction, by which *hudd* or *kisas* is barred in the particular case, had not existed; and the judge is to proceed thereupon as directed in the preceding clause. Reg. LIII. 1803, sect. 2, cl. 4.

But not, if such
exception alters the
nature, and dimi-
nishes the criminali-
ty of the offence.

1311. Nothing in this section, however, is to be construed as authorizing a sentence of discretionary punishment exceeding, or equal to, the specific punishment prescribed by the Mahomedan law, in cases where such specific penalty is remitted or mitigated by the provisions of the Mahomedan law, in consideration of circumstances which alter the nature, and diminish the criminality, of the offence, unless such enhanced or equal punishment for the crime in question has been expressly denounced by some regulation in modification of the Mahomedan law. Reg. LIII. 1803, sect. 2, cl. 5.

1312. Whenever the futwa be dispensed with, and the crime of which the prisoner is convicted be one, which the judge is not specifically empowered by the regulations to punish, he is not to proceed to pass sentence, but is to refer the case for the consideration of the nizamat adawlut, stating at length in the proceedings the opinion of the panchayat, assessors, or jury, and his own opinion as to the crime proved, and the nature and extent of the punishment, which should be awarded. Reg. VI. 1832, sect. 4, cl. 1.

1313. Nor is any part of this regulation to be considered to authorize the infliction of any punishment whatever upon suspicion only (termed by the Mahomedan lawyers *wuhm*, *shuk*, or *shoobuh zaefah*) when the evidence against the prisoner is undeserving of credit; or the presumption of his guilt, arising from credible testimony or circumstantial evidence, is weak; and does not amount to the degree of strong and violent presumption held sufficient for conviction, and recognized as such in the Mahomedan law under the denominations of *ghalib-oo-zun*, *akbur-oo-raee*, and *shoobuh-u-curvee*, or *shoodeed*. When the judge, before whom the prisoner is tried, does not consider him convicted on such presumptive proof, or on the evidence of credible witnesses, or on his own confession, he is not to sentence the prisoner to suffer any punishment, whatever may be the futwa of the law officer. But, upon proof of notorious bad character, the judge may direct the magistrate to detain the prisoner in custody, until he gives sufficient security for his future good behaviour and appearance when required. Reg. LIII. 1803, sect. 2, cl. 6.

But no punishment is to be inflicted on suspicion

Security may be taken for future good behaviour.

1314. If the crime of which a prisoner is convicted, and for which he is declared liable to discretionary punishment has neither been specifically provided for by any regulation, nor by any stated penalty in the Mahomedan law; and the judge before whom the trial is held considers the crime to have been established against the prisoner and deserving of punishment; he is to adjudge the prisoner, after consulting with the law officer respecting the measure of punishment which under the discretion left by the law, and the whole of the circumstances of the case, should be inflicted upon the prisoner, to suffer such punishment as appears adequate to his guilt, and the nature of the offence of which he is convicted; not exceeding corporal punishment of thirty-nine stripes, and imprisonment with hard labor for seven years. If in any instance this degree of punishment appears to the judge insufficient, in a case not specifically provided for by the Mahomedan law or the regulations, he is to transmit the trial with his sentiments thereon to the nizamut adawlut. Reg. LIII. 1803, sect. 2, cl. 7.

If the crime has not cally by a or by law.

1315. Under the above provision the session judge may award a pecuniary fine commutable to imprisonment. N. A. R. vol. 3, page 130. But he cannot award imprisonment and fine with further imprisonment in default of payment. Reports L. P. 1852, part 2, page 184; and 1855, part 1, page 729. Reports W. P. 1856, part 1, page 307.

Judge may sentence to fine, but not to fine and imprisonment.

1316. In many cases of corporal injury, extending even to *maihem*, the law officers declared the prisoners on full conviction liable to *hukoomut-i-udl* only, or a just award, which is construed by them to mean payment by the prisoner of the expenses incurred for medicines and medical attendance by the party injured. Such reparation being considered wholly inadequate, it was enacted that the judge should, under such futwa, be competent to pass sentence of imprisonment for any period not exceeding seven years, with power to refer the record to the nizamut adawlut in any case in which they deem that degree of punishment inadequate; and that on receipt thereof the nizamut adawlut, after requiring a further futwa from their law officers, should pass sentence of imprisonment for such limited period of time, as under all the circumstances of the case may be equitable and just. (a) Reg. IV. 1822, sect. 6.

Power of session judge to pass sentence under futwa of *hukoomut-i-udl*.

(a) In a case, in which certain convicts, under sentence of perpetual imprisonment, were found guilty of assault and wounding, and declared by the law officer liable to *fazeer* as well as *hukoomut-i-udl*, it was held that the above provision does not preclude the judge from awarding corporal punishment under cl. 7, sect. 2, Reg. LIII. 1803. N. A. R. vol. 2, page 362.

Conviction of two or more offences.

In such cases an aggregate sentence may be passed within certain limits. If that is insufficient, the cases are to be referred.

1317. Whenever a prisoner is brought to trial before a sessions court for two or more distinct offences, included in separate commitments, and is convicted at the same session of two or more offences, the prescribed penalties of which, under the regulations in force, exceed in the aggregate thirty-nine stripes and imprisonment for fourteen years; but do not, for the crime established against the prisoner on any one commitment, amount to death or imprisonment for life (in which case the trial would be referrible to the nizamat adawlut); the judge is authorized to reduce the prescribed punishment for the whole of the offences of which the prisoner is so convicted at the same session, so as not to exceed in the aggregate thirty-nine stripes and imprisonment in banishment from the district for fourteen years; provided he is of opinion, on consideration of the several acts of criminality established against the prisoner and the circumstances of each case, that the punishment above specified is sufficient. If the judge, however, is of opinion that the prisoner is deserving of imprisonment for a longer period than fourteen years, he is to pass sentence in the several cases for the punishment prescribed by the regulations (except that the number of stripes to be adjudged against a prisoner at any one session does not exceed thirty-nine), and is to transmit the proceedings on each case, with a report of the circumstances, and his sentiments upon the punishment which should be inflicted upon the prisoner, for the final sentence or order of the nizamat adawlut. Reg. XV. 1814, sect. 2, cl. 1.

Principle restricted to offences committed before conviction.

1318. The principle of the above clause is also to be considered applicable to cases, in which prisoners, convicted and sentenced at a preceding session, are convicted at a subsequent session of another offence committed before their first conviction and sentence. But it is not meant to apply to any new offence committed by a person after his conviction of a former offence, whether the period of confinement to which he has been sentenced for his former offence has expired at the time of his committing the subsequent offence or otherwise. Reg. XV. 1814, sect. 2, cl. 2.

Consolidated sentence to be within aggregate of separate sentences.

1319. A consolidated sentence for distinct offences must not exceed in amount the aggregate of the penalties which might have been separately imposed. Reports *W. P.* 1854, part 1, page 612.

If the prisoner be liable on the first conviction to the punishment, need not any

ject him to death, or imprisonment for life.

1320. When a prisoner, committed or held to bail for trial before the sessions on two or more distinct charges, is liable on one or more conviction to a sentence of imprisonment for fourteen years; and the further charge or charges against the prisoner are not such as would, on conviction, subject him to a sentence of death or imprisonment for life, it is not requisite for the judge to try such additional charge or charges, unless there appears to be special and sufficient cause for trying the same. But, whenever a judge exercises the discretion thus vested in him, he is to report the same with his reasons to the nizamat adawlut in the statement transmittible to that court of sentences passed by the sessions court, or, if the trial held upon the prisoner is on any account referrible, in the letter accompanying such trial; and it is competent to the nizamat adawlut to order a further trial of the remaining charge or charges against the prisoner in all cases wherein that court may judge it proper so to direct. Reg. XV. 1814, sect. 2, cl. 3.

1321. The provisions of Reg. XVI. 1825,(a) which declare the minimum punishment which a session judge can award in certain cases of robbery, do not alter the above provisions, under which the judge is competent to reduce the punishment of prisoners convicted of two offences to fourteen years' imprisonment. N. A. R. vol. 2, page 459.

The vision is affected by these provisions.

1322. When a prisoner is committed in several cases, it is imperative on the judge, under the above provisions, to try the whole or a sufficient number of the charges, until, upon a consideration of the several acts of criminality established against the prisoner, he is of opinion that a sentence of fourteen years' imprisonment, is sufficient and adequate, and that no reason therefore exists for trying the remainder. Const. No. 1011.

The judge must try a sufficient number of cases to warrant a sentence; try no more.

1323. A prisoner was committed in two cases, charged in the first with murder by poison, and in the second with administering poisonous drugs with intent to rob; and being convicted in the first and declared liable to *seasut* extending to death, the judge of circuit did not think it necessary to proceed to the trial of the additional charge, which could lead only to an inferior penalty; but the nizamat adawlut deemed it advisable to proceed with the trial as it might tend, if proved, to establish an assertion made by the judge, that "the prisoner was in the habit of travelling about plundering by means of administering poisonous drugs." N. A. R. vol. 2, page 51.

But under certain charge to

1324. When a prisoner is charged with two or more distinct offences, the record of each trial should be kept separate; and a futwa should be taken on each individual case, not on the whole collectively; under each futwa the judge should record his assent or dissent; and each of the trials should refer to the one last tried, which should include in its final order all the three cases. N. A. R. vol. 2, page 140.

In such trials to be distinct; and assent to on all in

1325. When a prisoner is convicted of two offences, and labor is commutable to a fine in only one of the two cases, the sentences should be kept distinct. Reports *W. P.* 1854, part 1, page 612.

If labor is commutable one case

1326. Under the Mahomedan law it is said, that one punishment suffices for every previous repetition of the same offence; and this rule is strictly applicable to the specific punishment adjudged under a sentence of *hudd*; when extended to sentences of *tazeer*, it leaves a considerable discretion with the judge in apportioning the punishment to the number of offences committed, as well as to their degree of criminality. This consolidation of sentences (*tudakhil*) would not militate against a due enforcement of the above provisions, if the judge were careful to make the law officer deliver his futwa in conformity with cl. 1, sect. 2, Reg. LIII. 1803, when the prisoner is liable to discretionary punishment. C. O. No. 140 of vol. 1.

Rule for consolidation of sentences under the Mahomedan law.

1327. A case of burglary and theft was referred to the nizamat adawlut, because the prisoner was recommended to be transported for life in a case of dacoity transmitted at the same time: but, as he was acquitted of the latter charge, the former case was returned to the circuit judge to be disposed of in the usual manner. N. A. R. vol. 3, page 119.

Example of prisoner returned to nizamat.

(a) These provisions were rescinded by Reg. I. 1881; but the rule applies to all laws which enact a minimum punishment.

SECTION. XXXVII.

OF CORPORAL PUNISHMENT.

Regulations 1328. All provisions of the [then] existing regulations, which authorize a sentence of corporal punishment by any court or any officer exercising magisterial powers, are rescinded. (a) Reg. II. 1834. sect. 2, cl. 1.

Such punishment 1329. Whenever a case comes before such court or officer, in which a prisoner would be liable to corporal punishment under the [then] existing regulations, in addition to the period of imprisonment limited by the regulations, it is competent to such court or officer, passing sentence, to direct an additional period of imprisonment, as follows: courts of nizamat adawlut, or courts of session and circuit, two years,—magistrates or joint magistrates, one year,—assistants, principal or other sudder ameens, one month. Reg. II. 1834, sect. 2, cl. 2.

Powers of courts.

Powers of assistants with special 1330. Assistants exercising special powers cannot in any case award a longer term of imprisonment than one month in lieu of stripes. They are, however, at liberty, as in other cases in which they deem the prisoner deserving of a degree of punishment beyond their competency, to return the case to the magistrate for the issue of final orders, stating their own opinion thereon. C. O. No. 162 of vol. 2. Const. No. 883.

Stripes cannot unless expressly by the as the of the question. 1331. A magistrate has no authority whatever to award corporal punishment [or a term of imprisonment in lieu thereof], where it is not expressly given to him by the regulations: his general powers of punishment, as laid down in sect. 19, Reg. IX. 1807, are limited to fine and imprisonment. C. O. No. 259 of vol. 1.

So, police officers the be not to 1332. As burkundazes, chokeedars, &c. were not formerly liable for neglect of duty to stripes in addition to imprisonment, the provisions of Reg. II. 1834, in prohibiting the infliction of corporal punishment, do not authorize any addition to the period of imprisonment, to which the officers in question were liable previous to the issue of that enactment. (b) C. O. No. 238 of vol. 2.

So, in a case of fraudulent appropriation. 1333. So, as corporal punishment could not legally be awarded in a case of fraudulently taking cash and bank notes from the treasury, additional imprisonment for two years in lieu of stripes could not be awarded. Reports *L. P.* 1852, part 1, page 112.

Magistrate may always commute stripes to a year's imprisonment. 1334. A sentence of imprisonment for one year in lieu of stripes, in addition to a sentence of six months' imprisonment, passed by a magistrate, is not illegal under the wording of the above provisions. Const. No. 1183.

(a) By Act III. 1844, corporal punishment has been legalized in certain cases of petty theft; but its provisions will be more appropriately noticed in the chapter of theft, than in this place.

(b) By sect. 6, Reg. III. 1812, and sect. 9, Reg. XIV. 1816, chokeedars and other watchmen, and burkundazes and inferior police officers, were liable to corporal punishment instead of fine or imprisonment, "provided the offender shall appear a fit object of corporal punishment, and the magistrate shall be of opinion that the infliction thereof will operate as a better example than the penalties of fine or imprisonment."

1335. A magistrate is competent, under the above provisions, to award imprisonment for a period of one year in lieu of corporal punishment, in addition to the term he is authorized to award under sect. 5, Reg. XII. 1818, in the case of a convict making his escape. Const. No. 1184.

1336. The above provisions do not exempt convicts, sentenced to labor in irons, from such moderate corporal punishment during their imprisonment, as may be unavoidable for the maintenance of the discipline of the jails. Reg. II. 1834, sect. 6.

Convicts, sentenced in certain cases.

1337. The session judge is not competent to award stripes under the foregoing section, that power being vested solely in the magistrate for the maintenance of discipline in the jail. Const. No. 1302.

cannot stripes.

1338. All offences which are opposed to the maintenance of good order and discipline in the public jails (as those enumerated in sect. 5, Reg. XIV. 1816) are punishable with stripes under sect. 6, Reg. II. 1834, when established against convicts sentenced to labor in irons. But it must be borne in mind, that the corporal punishment should be moderate, and that it should be inflicted only when it is thought to be "unavoidable for the maintenance of the discipline of the jail." C. O. No. 235 of vol. 3.

When convicts in jail are liable to punishment by stripes.

1339. Prisoners punished by the magistrate for breach of jail discipline cannot afterwards be tried for the same offence, as any further punishment would be cumulative and therefore illegal. N. A. R. vol. 6, page 58.

If stripes, then no other punishment.

1340. No prisoner is to be flogged without the opinion of the civil surgeon being first taken as to whether the case is one in which that punishment can be safely administered. As a general rule, stripes should be inflicted upon the breech and not upon the back, proper measures being adopted to guard against the blows falling upon any other than the part intended to receive them. C. O. Govt. *Bengal*, May 13, 1852.

Surgeon to examine person to be

Stripes to be inflicted on buttocks.

1341. Corporal punishment may not be awarded in cases of culpable homicide under sect. 7, Reg. XVII. 1817, which was merely intended to limit the term of imprisonment, in commutation of *deyut*, to seven years. Const. No. 352. C. O. No. 293 of vol. 1. In accordance with the spirit of this rule, the punishment of stripes was considered inappropriate in cases of wounding with intent to kill, and of assault attended with homicide and beating. N. A. R. vol. 2, pages 269, and 323.

Corporal punishment is not applicable to cases of homicide or wounding with intent to kill.

SECTION XXVIII.

OF FINES.

1342. No fines are to be imposed by any court of criminal jurisdiction, save and except to the use of government; and whenever a fine to the use of government is imposed, the court who passes the sentence is at the same time, weighing all the circumstances of the case, to fix a definite period of imprisonment to be held as equivalent to the fine; at the expiration of which the persons convicted are to be discharged, although they have omitted to

Fines imposed by a regulation.

All fines imposed to be to the use of government; and an equivalent period of

imprisonment to be fixed.

Power of session judge :

pay the fine. The imprisonment awarded by courts of session under this section, as an equivalent for fines imposed by them, is to be temporary in all cases, and not for life ; and their sentences are to be executed without reference to the nizamat adawlut. *Beng. and Ben. Reg. XIV. 1797, sect. 3, cl. 1. Ced. Prov. Reg. VI. 1803, sect. 31 ; and Reg. VII. 1803, sect. 39, cl. 1.*

in case of futwa of

* *kutl-and,*
shibeh-and,
kutl-khota,
kutl-kayem-mo-
kam-ba-khota,

1343. Whenever the law officer declares prisoners liable to *deyut*, or pecuniary fines of any kind, for any other acts than murder and the several descriptions of homicide specified* in sect. 3, Reg. IV. 1797 (*Ced. Prov. sect. 15, Reg. VII. 1803*); the session judge is to commute at his discretion such *deyut*, or fines, to imprisonment for such period as he thinks adequate to the offence ; and the sentences in such instances are to be carried into execution without reference to the nizamat adawlut, if for temporary imprisonment ; or referred to that court, if for imprisonment for life ; which at its discretion is to confirm the said sentences, or mitigate, or entirely remit, the imprisonment awarded. *Beng. and Ben. Reg. XIV. 1797, sect. 4. Ced. Prov. Reg. VII. 1803, sect. 39, cl. 2.*

in general is unrestricted.

1344. The power of a session judge to fine is unrestricted as to amount, except when it is defined by any specific regulation (as in the case of *dhurna* by Reg. VII. 1820.) Const. No. 959. This rule is confined to the *Lower Provinces*. C. O. No. 227 of vol. 3. *W. P.*

Power of nizamat adawlut.

1345. The nizamat adawlut is competent to impose fines to an indefinite amount, commutable to a limited period of imprisonment. N. A. R. vol. 2, page 304.

as

1346. In all cases, in which the magistrates impose fines, the imprisonment to be fixed by them, as equivalent to the fines, is not to exceed the period which they can award under their general power. *Beng. and Ben. Reg. XIV. 1797, sect. 5. Ced. Prov. Reg. VI. 1803, sect. 31. Reg. IX. 1807, sect. 19.*

If the regulation is silent as to the mode of levying the fine.

1347. If a regulation, prescribing a fine for any offence, is silent as to the mode in which such fine is to be levied, it should be commuted to imprisonment under the above rules whenever the party on whom the fine is imposed neglects to pay it:—as in the case of persons illicitly cultivating salt churs, under sect. 12, Reg. I. 1824;—or of zumeendars neglecting to furnish lists of chokeedars, &c., under sect. 21, Reg. XII. 1807. Const. Nos. 388, and 1150.

Fines imposed by an Act.

To be levied by ;

default of by impri-

for not more than 2 months if fine is less than 50 rupees ; or 4 months if less than 100 ; or 6 months in

1348. In all cases of fines by which offenders are or may be punishable by any magistrate, according to the provisions of any Act heretofore passed, or which shall hereafter be passed by the governor general of India in council, it is lawful, in case of non-payment, if no other means for enforcing the payment are or shall be provided by such Act or otherwise, for the magistrate, by warrant under his hand, to levy the amount of such fine by distress and sale of any goods and chattels of the offender which may be found within the jurisdiction of such magistrate ; and if no such property is found within such jurisdiction, then it is lawful for every such magistrate by warrant under his hand to commit the offender to prison, there to be imprisoned only, or to be imprisoned and kept to hard labor, according to the discretion of such magistrate, for any term not exceeding two calendar months, where the amount of the fine does not exceed fifty rupees ; and for any term not exceeding four calendar months, where the amount does not exceed one hundred rupees ; and for any term not

exceeding six calendar months, in any other case; the commitment to be determinable in each of the cases aforesaid upon payment of the amount. Act II. 1839, sect. 1.

1349. This provision is applicable to the case of fines imposed under an Act, only when no other means of enforcing the payment are provided by such Act. Letter of Nizamut Adawlut to Magistrate of 24-Pergunnahs, No. 1415, October 6, 1852.

But only if supplies no other mode of enforcing payment.

1350. A person convicted of a breach of Act XI. 1835 (regarding printing presses) is liable to be punished with fine not exceeding a certain amount, and imprisonment not exceeding a certain term. Under these provisions the offender must be sentenced to imprisonment in addition to fine; and the fine is not commutable to a further period of imprisonment, but must be levied according to the above rule. Const. No. 1325.

1351. In all cases in which offenders are or may be punishable by any magistrate with fine or imprisonment, or both, according to the provisions of any Act heretofore passed, or which shall hereafter be passed by the governor general of India in council, and where the extreme amount of the fine or imprisonment is not specified, it is not lawful for the magistrate to impose any fine exceeding two hundred rupees, or to imprison the offender for any term exceeding six months. Act II. 1839, sect. 2.

If the Act does not specify the extreme amount of

may not award more than 200 or 6

1352. In all cases in which offenders are or may be punishable by fine before a magistrate according to the provisions of any Act heretofore passed, or which shall hereafter be passed by the governor general of India in council, it is lawful for the magistrate, and he is required, to receive proof of the commission of the offence upon oath, or upon solemn information in cases where a solemn affirmation is receivable by law instead of an oath. Act II. 1839, sect. 3.

Proof of the commission of the offence to be taken on solemn affirmation.

1353. In this Act and in all Acts heretofore passed by the governor general in council the term "fine" and "fines" extend to all "penalties" and "forfeitures;" and the term "magistrate" extends to all "joint magistrates," "persons lawfully exercising the powers of a magistrate," and "justices." Act II. 1839, sect. 4.

Explanation of terms, fine, and magistrate;

1354. The term "Act," used above, is employed in contradistinction to the "Regulation" strictly so called, and the provisions of that enactment are not intended to explain anything contained in the regulations on the subject of fines. C. O. No. 23 of vol. 3.

and Act.

1355. The imposition of heavy fines upon native servants of government, drawing small allowances, is objectionable, as involving them in pecuniary difficulty, and inducing them to resort to improper practices for the purpose of indemnification. The preferable course is, when an officer refuses to do that which his official duty requires of him, to transfer at once the office to a more obedient holder. C. O. No. 60 of vol. 3.

Heavy fines not to be imposed on native officers.

1356. The creation and maintenance of unauthorized funds in the public offices, through the means of fines, or from deductions made from the pay of establishments, is prohibited; and sums thus accruing should be carried to the credit of government. C. O. No. 90 of vol. 3.

Unauthorized funds not to be created by

1357. The form of a general register of fines is prescribed,* the object of which is to provide against the misappropriation, on the part of the ministerial officers, of moneys paid in to court; but it is not intended to prevent the adoption of any additional checks, which

Register of
*v. Appendix B.
No. 29.

the officer presiding in the court considers necessary. Due attention is to be paid to the entry in the register of all fines immediately they are imposed,—to the issuing of perwannahs to the nazir to realize the amount of such fines,—and to the examination of the register at the commencement of every month by the head clerk, serishtadar, nazir, and treasurer of the court. C. O. No. 4 of vol. 3.

SECTION XXIX.

OF LABOR AND IRONS.

may be
in any
prohi-

Sentence always
to contain order for
labor or its remis-
sion.

1358. In all cases of misdemeanor, or offences punishable under sect. 19, Reg. IX. 1807, the magistrate may include labor as a portion of the sentence, when it is thought fit that labor should be imposed [unless, of course, the award of labor should be specially prohibited by law]; and in passing sentence officers are invariably to record, whether the imprisonment is to be with or without labor. C. O. No. 99 of vol. 4, *L. P.* Labor can form part of the punishment only when included in the sentence. Resolution Nizamut Adawlut No. 292, April 3, 1846. See para: 1374.

Reg. II. 1834.

1359. Reg. II. 1834, in no way defines the classes of cases, in which the criminal courts are competent to pass a sentence of labor. It only declares in what cases a fine must, in the first instance, be imposed in lieu of labor. Reports *L. P.* 1853, part 1, page 727.

Labor is commu-
table to a fine ex-
cept in cases of cer-
tain offences.

1360. In all cases of conviction for offences in which a sentence of imprisonment is passed for a period of less than five years, (with exception to the offences of murder, dacoity, highway robbery, burglary, theft, receiving stolen or plundered property, forgery, perjury, arson, and rape, or of convictions of any attempt to commit any of those offences) the criminal courts are required to commute the penalty of labor with or without irons, which they are authorized to award in addition to imprisonment, to a fine not exceeding the amount which they are respectively competent to impose under the regulations in force; such fine to be regulated with reference to the nature of the offence, the circumstances in life of the offender, and the term of imprisonment to which he is sentenced. The court imposing the fine is to fix a certain day within a reasonable time not exceeding one month for the payment thereof, and to direct that, in default of payment by the period prescribed, the prisoner be subjected to labor without fetters, until such fine be paid, or if not paid, until the completion of the term of his sentence. Nothing in this rule is to be construed to supersede the power of the commissioners of circuit, session judges, or nizamut adawlut, of exempting persons from labor and irons in any case whatever in which they deem such exemption just and proper. Reg. II. 1834, sect. 3, cl. 1.

But the courts
may always exempt
from labor and
irons.

Not commutable
on sentence is
5 years, or

1361. Under the above provisions, when a prisoner is sentenced to imprisonment for five years and upwards the labor cannot be commuted to a fine. C. O. No. 221 of vol. 2.

1362. Whenever labor is imposed according to C. O. No. 99 of vol. 4, it must be made commutable to fine in all cases in which commutation is required by Reg. II. 1834. Reports *L. P.* 1853, part 2, page 359.

Labor must be commuted when the law requires commutation.

1363. Since the term forgery, as above used, does not necessarily comprehend the crime of issuing forged coin, documents, &c. knowing them to be forged, the punishment of labor on conviction of such offence is commutable to fine. Const. No. 899.

Constructions of excepted offences; issuing forged documents;

1364. As wounding with intent to murder is equivalent to an attempt to commit murder, labor in such case cannot be commuted to fine. Reports *W. P.* 1856, part 1, page 510.

wounding with intent to murder;

1365. The guilty possession of stolen property (as distinguished from the guilty receipt) is not one of the exceptions; and therefore labor awarded in such case is commutable to fine. N. A. R. vol. 6, page 175.

guilty possession;

1366. So, in cases of conviction for burglary, when the crime does not amount to more than simple privity, the penalty of labor must be held to be commutable to a fine. Const. No. 1178.

privity to burglary;

1367. Accessories before and after the fact being felons in consideration of law, the privilege of commuting labor to a fine should not be extended to them, as to those convicted of privity which is a misdemeanor only. C. O. No. 8 of vol. 4.

accessaries;

1368. A prisoner sentenced to imprisonment for escaping from jail is entitled to exemption from labor, on payment of a fine, for the period of his confinement for that specific offence. Const. No. 1215.

additional impri-

1369. In cases in which a magistrate may sentence to a term of imprisonment with labor, and also to a fine commutable to a further period of imprisonment (as in cases of affray unattended with aggravating circumstances, under sect. 3, Reg. VIII. 1828), he is competent to award labor during the further period of imprisonment as during the original term; and he may make the labor redeemable by a fine for both periods. If labor is not awarded in the former division of the sentence, it ought not to be awarded in the other. Const. Nos. 972 and 1264.

The same rules apply in the case of additional imprisonment in lieu of fine.

1370. All prisoners exempted from labor on payment of a fine under the above rule are, as far as practicable, to be kept separate, both in and out of the jail, from convicts under sentence of labor in irons; and magistrates, and superintendents of prisoners, and their subordinate officers, are to be careful to prevent all communication between the two classes. Reg. II. 1834, sect. 3, cl. 2.

Prisoners exempted from labor to be kept separate.

1371. Three prisoners, sentenced to imprisonment without irons, and to labor inside the jail, petitioned to be allowed to work on the roads, and agreed to have gyves put on their legs; it was held by the nizamat adawlut, that the local officers were not competent to make any alteration in the sentence passed on the prisoners. Const. No. 1005.

Prisoners not sentenced to labor may not be allowed to work on the roads at their own request.

1372. The above rules are to be held to apply equally to persons convicted by the magistrates, joint magistrates, and assistants, and by the principal and other sudder ameen; but they are not intended to interfere with the general discretion vested in the magistrates of imposing fetters, or otherwise restraining refractory prisoners under the provisions now

The same rules are applicable to persons convicted by magistrates and their subordinates. But magistrate may al-

ways impose fetters on refractory prisoners, or those who have escaped.

in force for that purpose; nor to exempt from a sentence of labor, with or without irons, convicts who having been relieved therefrom effect their escape from a jail or other place of confinement, or from the custody of their guards, and have been re-apprehended. Reg. II. 1834, sect. 4.

Judge may always order exemption from labor, in passing sentence.

1373. Session judges may insert an exemption from hard labour in the warrants issued by them to the magistrate, in cases wherein, on consideration of the rank or situation in life of any person sentenced to imprisonment, they consider him to be an improper subject of hard labor. C. O. No. 44 of vol. 1.

When no specific order is passed for the imposition of fetters, magistrate may use discretion.

1374. In all cases wherein no specific orders are issued either by the nizamat adawlut, or sessions court, for the confinement of a prisoner with or without irons, the magistrate is at liberty to exercise his own discretion, and to direct the prisoner to be confined in fetters or not, according as the same appears proper or necessary for his safe custody, from the nature and circumstances of the case, considered with the prisoner's rank and former condition in life. C. O. No. 122 of vol. 1.

Cases of native soldiers.

1375. The above rule is applicable to the cases of native soldiers and camp followers, who are made over to the civil authorities to undergo sentences of imprisonment adjudged against them by courts martial. C. O. No. 155 of vol. 3.

But in such cases labor and irons should not be imposed except for the preservation of discipline.

1376. In the case of certain persons sentenced to five years' imprisonment by the nizamat adawlut, in which the sentence made no mention either of labor or irons as forming part of the punishment, the magistrate was informed, on a reference, that it was intended that they should be confined without labor and without irons, unless the conduct of the prisoners should render a resort to this species of restraint and punishment necessary to the due preservation of discipline in the jail. N. A. R. vol. 3, page 49.

Labor is not to be imposed on persons nor fet-

demeanors.

1377. Magistrates are not to work upon the roads persons unfit to be so exposed from their previous habits, or the nature of their offence; and they are generally restricted from passing a sentence of fetters in cases of misdemeanor; or from imposing them on any person confined for such offence, except in the event of special necessity arising out of the bad conduct of the offender during his imprisonment, which may make such restraint indispensable for his security: the magistrates therefore, in placing fetters under this restriction on any person convicted of misdemeanor, are to record on their proceedings the grounds of the measure in each case. C. O. L. P. Nos. 217 and 223; and W. P. No. 224 of vol. 1.

Form of warrant of imprisonment when labor may be redeemed.

1378. The following form is prescribed for warrants of imprisonment including a sentence of fine in lieu of labor, under the above provisions: "——— and sentenced to be imprisoned without irons for —— years from this date, and to pay a fine of rupees ——, on or before the —— day of ——, or, in default of payment, to labor, until the fine be paid, or the term of sentence expire." C. O. No. 146 of vol. 2.

SECTION XXX.

OF TUSHEER.

1379. It is not lawful for any court or magistrate, within the territories under the government of the East India Company, to sentence any offender to be publicly exposed by tusheer, or to any other degrading exposure. Act II. 1849, sect. 2.

Tusheer abolished.

SECTION XXXI.

OF TRIALS REFERRED AND CALLED FOR.

1380. The sessions court is to transmit to the nizamat adawlut copies of the proceedings on the trial of all prisoners, whom it sentences to suffer death, or who in the opinion of the court are deserving of capital punishment, within ten days after the trial is completed, or as much earlier as from the state of business may be practicable. Reg. IX. 1793, sect. 58. Reg. VII. 1803, sect. 27.

When to be forwarded.

In cases involving capital punishment, trial to be transmitted within ten days.

1381. In the transmission of trials to the nizamat adawlut, the session court is to give a preference, as far as practicable, to those trials in which the prisoner or prisoners have been sentenced to capital punishment, or are liable to suffer such under the regulations. Reg. IV. 1797, sect. 13. Reg. VII. 1803, sect. 36.

Such cases to be transmitted first.

1382. In the transmission of the proceedings to the nizamat adawlut, the session judge is to be guided by such forms and instructions as he receives from that court. Reg. IV. 1797, sect. 14. Reg. VII. 1803, sect. 38.

Judge to be guided by of

1383. The session judge is competent to hold to bail, or to direct the magistrate to admit to bail, any prisoner or prisoners, whose trials are referrible to the nizamat adawlut in consequence of the judge not concurring in the futwa of the law officer for the conviction of the prisoner. When the prisoner is not able to find bail, the judge is, with the least possible delay, to transmit the proceedings held upon the trial with a letter stating the grounds, on which he does not concur in the futwa of the law officer, to the nizamat adawlut; and the law officers of that court are to deliver their futwa, as soon as possible after the receipt of the trial, for the early sentence or order of the court. Reg. XIV. 1810, sect. 7.

In cases the judge mit the to bail :

and the nizamat to conclude the trial without delay.

1384. A judge on circuit is invariably to transmit the counterpart record of the proceedings from the station where the trial has been held, before he proceeds to any other station; unless from the number of referrible trials, his detention, while the record is transcribing, would be such as materially to impede the circuit; in which case he may defer the transmission of the trial till his arrival at the next station; reporting to the nizamat adawlut, before he quits the station at which the trials were held, what referrible trials are so deferred, the

Judge on circuit is to transmit referrible trials from the station — they are except in special cases.

dates on which they were respectively held, and how soon the records will be transmitted. But the transmission of trials is not, in any instance, to be delayed beyond ten days after the arrival of the judge at the next station, without strong and special reasons of absolute necessity, to be fully and immediately reported for the information of the court. C. O. Nos. 27, 143, and 181 of vol. 1.

Delay in forwarding trials is to be avoided, and is considered inexcusable.

1385. It is essential to the ends of justice that delay in transmitting the records of trials referred should be obviated, as well to prevent the lengthened confinement of prisoners, who may be ultimately acquitted by the nizamut adawlut, as to expedite the punishment of those who may be convicted. No valid excuse can possibly exist for the unnecessary procrastination of their despatch; and the nizamut adawlut requires the judges so to regulate their own time, and that of their officers, that no cause of dissatisfaction may occur on this score. Reg. X. 1799, preamble. C. O. Nos. 54 (para. 24), and 135 (para. 5) of vol. 2.

Record.

Counterpart record to be forwarded with English letter containing the opinion of the judge.

The record how to be authenticated and what to include.

The proceedings of the magistrate to be sent in original; but certain papers to be transferred to the sessions record.

* v. § 586 and 1178.

1386. As soon as possible after the close of any trial referrible to the nizamut adawlut, and with no further delay than is necessary to transcribe the proceedings held thereon, the session judge is to transmit a complete and exact counterpart of the original record of all proceedings held, and papers received, relative to such trial, with an English letter stating his opinion on the evidence, and on the guilt or innocence of the prisoners. The record is to be authenticated by the signature of the judge, and the seal of the law officer, before whom the trial has been held; and is to include the whole of the proceedings held before the sessions court, with every examination, exhibit, or material paper of whatever denomination, taken by or delivered to that court. The whole of the proceedings and papers received from the magistrate, upon the case referred, are also to be annexed to, and transmitted with, the proceedings of the sessions court; but any variations between the depositions of the witnesses before the magistrate, and session judge, are to be carefully noticed on the proceedings of the latter, as directed in cl. 7, sect. 7. Reg. IV. 1797*; and any confessions of prisoners before the magistrate, any inquest taken in cases of homicide, or any other evidence appearing on the proceedings of the magistrate, are to be entered, with the necessary proof, on the proceedings of the sessions court. Reg. X. 1799, sect. 2. Reg. VII. 1803, sect. 41.

Report of inquest is invariably to be filed with the sessions proceedings.

1387. In all references of trials of murder, the report made to the magistrate of the inquest held on the body of the deceased is invariably to be transmitted with the proceedings. If no inquest has been held, the cause of omission is to be noted in the letter accompanying the trial, the magistrate being called upon if necessary for an explanation. C. O. No. 17 of vol. 1.

The proceedings of the sessions court to be copied; the magistrate's amlahs are to assist in copying, and judge may employ additional mohurirs.

1388. Copies only of the proceedings of the sessions court are to be transmitted to the nizamut adawlut, the originals being retained for record in the office. And in order to enable the judge to prepare such copies with the least possible delay, the magistrate is required, on the application of the judge, to afford as far as practicable the assistance of his native officers in transcribing the original proceedings; and the judge may also employ any additional mohurirs he may find necessary for the same purpose, transmitting a contingent bill on this account sanction of government. The proceedings and papers received from the magistrate,

required by the above provisions to be transmitted to the nizamat adawlut, are to be transmitted as received from the magistrate without making copies of them; and such papers, after the nizamat adawlut has passed sentence on the trial, are to be returned to the sessions court. The object of sending these papers in original is to avoid the delay, trouble, and expense, attending the copying of them; and no copies, therefore, should be taken, except in special cases where peculiar reasons render it advisable. C. O. Nos. 27, and 28 of vol. 1; and Nos. 135 (para. 5), and 191 of vol. 2.

are to be sent in original be special cases.

1389. The 6th paragraph of C. O. No. 54 of vol. 2,* was not intended to alter the practice of filing with the record of trials submitted to the nizamat adawlut the original confessions of prisoners. All original confessions and police reports are to be annexed, in the first instance, to the original record of the trial; and in all cases referred to or called for by the court, the originals should be transferred to the copy of the record submitted, attested copies being retained on the original record. C. O. No. 84 of vol. 2; and No. 52 of vol. 4. *W. P.*

Original confessions, &c. are to be filed in the copy of the record sent to the

* v. ¶ 1164.

1390. Session judges and magistrates are to cause their native officers to be very careful in transcribing the proceedings intended for the nizamat adawlut. C. O. No. 22 of vol. 1.

Care to be taken in copying

1391. By cl. 2, sect. 7, Reg. IV. 1797 (*Ced. Prov.* cl. 1, sect. 18, Reg. VII. 1803) it was directed that Persian translations should be annexed to all examinations taken down in any other language than the Persian; and by sect. 2, Reg. X. 1799 (*Ced. Prov.* sect. 41, Reg. VII. 1803) these translations were to be included in the record of referred trials transmitted to the nizamat adawlut. But, since the introduction in the conduct of public business of the vernacular language in lieu of Persian, the court in the *lower provinces* have dispensed* with translations of all proceedings in criminal trials referred to them, with the exception of those cases, tried with the assistance of the law officer, in which the session judge recommends a capital sentence; in such cases the translations are to be made in the Oordoo language, and to be submitted in a distinct and separate nuthee. The *Western* court have dispensed with the translations of evidence recorded in the vernacular language, except in so far as they require the session judges, in such cases as relate to districts wherein peculiar or corrupt dialects are in use, to transmit all proceedings they may refer to, or send up on a call of the court, written in a correct Oordoo style, and a fair and legible character; and direct the magistrates, wherever uncommon words or obvious provincialisms, occur in a record of evidence, to cause the mohurir at the time of taking it down to enter in the margin the corresponding or equivalent term in Persian. C. O. Nos. 26, *W. P.* and 94, *L. P.* of vol. 3; No 243 of vol. 2; and C. O. S. D. A. No. 42, July 5th, 1839.

Rules: translations of papers included in the record,

in the lower provinces,

* except as re-

and in the Western provinces.

1392. In all trials regularly referred to or called for by the nizamat adawlut, copies of the vernacular and English calendars are invariably to be placed with the nuthee; and in the latter a mark is to be placed opposite the name of every witness included therein, who has been examined on the trial; a memorandum also of the names of all witnesses, not named in the magistrate's calendar, whom the judge has thought proper to summon and examine, is to be entered thereon. The preparation of the list of papers composing the record (a form of which is annexed to C. O. No. 54 of vol. 2*) is to be carefully superintended. As many trials are now required to be submitted in original, all depositions are to be correctly and

Copies of the vernacular and Eng-

* v. appendix No. 10.

legibly written. C. O. No. 273 of vol. 1 ; Nos. 187 and 230 of vol. 3. *L. P.* ; No. 52 of vol. 4 ; *W. P.* and No. 2, February 7, 1856. *L. P.*

If magistrate re-
copy of his

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1393. Whenever a magistrate judges it necessary to take a copy of the whole, or any part of the original proceedings held by him, in a trial referrible by the sessions court to the nizamat adawlut, either on account of some of the persons charged with the same offence not having been apprehended, or from any other cause, he is to make application to the session judge to be allowed to take a copy or extract of such proceedings before the transmission of them to the nizamat adawlut ; and the judge is to comply with such application, unless in any particular instance the immediate transmission of the trial to the nizamat adawlut appears indispensably necessary. The magistrate, having taken the copy or extract required by him, is to return the original proceedings without delay to the judge, who will then transmit the same with the proceedings of the sessions court to the nizamat adawlut. When the judge deems it necessary to submit the trial without giving the magistrate an opportunity of taking a copy or extract of the proceedings held before him, he is to state the circumstance in his letter accompanying the trial to the nizamat adawlut, who will either take immediately or will send the magistrate to be

Letter.

Letter containing
opinion of judge to
be sent

to pass

the letter accompanying the reference should commence in this form : " I transmit herewith, to be laid before the nizamat adawlut, the proceedings on the trial noted in the margin, held at the station of——on the——."

Court of the session judge of zillah *Hooghly*.

Trial No. 3 of the calendar for the month of June 1846.

Government,.....Prosecutor,

versus

1. Bindrabun Das, aged 36 years, son of }
Heeranund, apprehended on the 5th May, and
committed on the 12th June,

2. Hurdyal, aged 50 years, son of Govind } Prisoners.
Pershad, apprehended on the 6th May and
committed on the 12th June,

Charge,.....Murder.

Date on which the offence was perpetrated, May 3rd,
Futwa, *kisat*, [or *seasut*, as the case may be.]

Both prisoners are in jail.

as to the guilt or innocence of the prisoner ; and, if the former, the specific crime which in his judgment has been established against the
No. 54 of vol. 2, paras : 9, 10, and 11.

The marginal note should contain the particulars, and be entered according to the form annexed : the specification of the trial is to be inserted in English only. The body of the letter should contain a brief recapitulation of the circumstances stated by the prosecutor, of the evidence adduced in support of the charge, and of the defence. The letter should contain stating the judge's concurrence with, or dissent from, the futwa ; together with a distinct expression of the judge's opinion

186 of vol. 1 :

1396. The judge is to note in the margin of the letter, under the charge on which the prisoner is committed, the date on which the offence is supposed to have been perpetrated ; and opposite to the name of each prisoner the dates of his apprehension and commitment for trial. C. O. Nos. 135 and 148 of vol. 2.

including the dates of the perpetration of the offence and commitment of each prisoner ;

1397. A note is to be entered in the margins of the letters which accompany trials referred to the nizamat, and those called for by them, stating distinctly whether the defendants are in jail, or at large on bail, and in the latter case from what date. C. O. No. 147 of vol. 3. *L. P.*

and whether the prisoners are in jail or on bail.

1398. The names of those prisoners only, in regard to whom the reference is made, are to be inserted in the marginal note of the letter of reference ; the inclusion of others, who have died or escaped prior to the termination of the trial, or have been acquitted or sentenced by the session judge, being calculated to create confusion and to mislead. And no papers are to be submitted with the record, which relate exclusively to prisoners regarding whom the reference is not made,—as *e. g.* the defence of such prisoners, or the depositions of witnesses called in their behalf. C. O. No. 228 of vol. 3. *W. P.*

The papers connected with those prisoners only, regarding whom the reference is made, are to be sent with the record ; and their names only inserted in the letter.

1399. The names of prisoners, and the sentence, as noted in the margin of the transmitting letter should exactly correspond with the names and sentence as entered in statement No. 9. There ought to be no difference in the spelling of the names, as entered in the calendar and letter of reference respectively, and the details of the charges against the prisoners should be *precisely* the same. And both names and charges must be written distinctly. C. O. No. 2, February 7, 1856. *L. P.*

Names of prisoners and sentence to correspond exactly with statement.

1400. The judge is to insert, in red ink, in the margin of his report, the name and number of the witness or witnesses, to whose evidence he is alluding. C. O. No. 111 of vol. 4. *L. P.*

Reference to be made in red ink to the witnesses.

1401. The judge is to write the names of all the prisoners, whose trials are referred to the nizamat adawlut, in the margin of the letters accompanying the trials, in English, in the order in which they are brought forward for trial. C. O. No. 102 of vol. 1.

Names of prisoners to be noted in the order in which they were tried.

1402. In referring any trials, wherein one or more of the prisoners are liable under the regulations to a sentence of death, the name of such prisoner's father is to be specified in English in the margin of the letter. C. O. No. 126 of vol. 1.

In cases of death, the name of the prisoner's father is to be specified.

1403. The court requires particular attention to be paid to the rules of C. O. No. 54 of vol. 2,* regarding the arrangement of the papers on the record of cases referred, and the transmission of them to the nizamat adawlut ; as in the case of inattention to these rules it is necessary to return the proceedings for revision and amendment. The additional degree of labor, incident to a more careful arrangement of the papers in each case by the ministerial officers, is trifling in comparison with the objects contemplated by the circular order in question ; and the judge should impress on them that, when it is found necessary to return the whole proceedings for amendment, their labor is only increased by their carelessness in the first instance.(a) C. O. No. 100 of vol. 2.

Particular attention required to the arrangement of the record, and the rules regarding the transmission of the case.

* See above, and

(a) The four last cases in volume 5 of the Nizamut Adawlut Reports are given as specimens of reports of referred trials. See pages 181, 186, 193, and 197. But see para. 1409.

Judge must record his opinion of the guilt or innocence of the prisoner.

1404. The judge having referred a trial for dacoity, wounding, and arson, without giving, in his letter or in the proceedings, a clear and explicit opinion as to the guilt or innocence of the prisoner, the case was sent back to him to supply the omission. Const. No. 222.

How far the judge is to recommend the measure of punishment to be awarded.

1405. In referring any trials for the final orders of the nizamat adawlut, the judge is to specify the punishment which, in his opinion, would be adequate to the crime established against the prisoners. The Western court, however, excepts from the operation of this rule trials held with the assistance of a law officer, in which cases the judge is to leave the measure of punishment to be awarded to be determined by the nizamat adawlut, confining himself to recording his opinion of the guilt or innocence of the prisoner, and of their relative degrees of guilt, should there be more than one prisoner. C. O. Nos. 22, 153, *W. P.* and 181 *W. P.* of vol. 3.

When the judge recommends imprisonment for life.

1406. In referring trials in which imprisonment for life is recommended, the judge is invariably to state his opinion, whether such imprisonment should be undergone in transportation or in the Alipore jail, with his reasons for proposing whichever of the two is suggested by him. (a) C. O. No. 41 of vol. 3.

When the judge refers a case beyond his competence for an extension, mitigation, or remission of punishment, he is to notice the same in his letter, and to state the grounds of his judgment.

i. e. cases of c.

1407. Whenever the judge refers the trial of a prisoner or prisoners, whom he considers proper objects of capital punishment under cl. 2, sect. 4, of this regulation*; or of imprisonment for life; or of a mitigation of punishment under cl. 5 of that section; or of an extension, mitigation, or remission of punishment in any case whatever; he is to be careful to notice the same in his letter accompanying the trial referred; and is to state at large the grounds of his judgment, whether for or against the prisoner, with such of the facts and circumstances in evidence upon the trial, as may be necessary to explain the case of the prisoner whose punishment is proposed to be extended, mitigated, or remitted. Reg. LIII. 1803, sect. 6, cl. 3.

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are to be sent with the record in cases called for.

1408. Session judges are to submit with each trial called for on perusal of the jail delivery statements, whether the call has been made by letter or by precept, an extract from the statements containing whatever information was conveyed in them relative to the case called for. When some prisoners have been punished and others released in the same case, an extract from each of the statements is required. The same remark applies to prisoners whose trials are postponed. But in appealed cases it is unnecessary to submit extract copy of sessions statement No. 6, when the original statement has been previously submitted to the court. (b) C. O. Nos. 110, and 149 of vol. 2; No. 164 of vol. 3; *W. P.* and No. 13 January 12, 1855. *L. P.* These extracts are not required in the *Western Provinces*. C. O. No. 277, March 5, 1855. *W. P.*

(a) By C. O. No. 180 of vol. 3, the judge was directed invariably to recommend in such cases a sentence of transportation for life instead of imprisonment for life; the object of which was to save the time of the court, as a single judge could not, on a recommendation of imprisonment for life, pass sentence of transportation, which is considered an aggravation of punishment. But this rule is no longer required to be observed, in consequence of the enactment of Act XIV. 1844, which authorizes a single judge of the sudder court to pass sentence of transportation beyond sea for life against a prisoner recommended to be imprisoned for life. C. O. No. 229 of vol. 3. *L. P.* See para. 1491.

(b) For particulars to be stated in letters transmitting appealed cases, see para. 1294.

1409. In his English decisions and reports on criminal trials, the judge should endeavour to confine himself to a clear and concise statement of the case, concluding with the reasons on which his judgment is formed. All lengthy recapitulation of evidence should be avoided; and in the narration of facts reference should be made marginally to the several witnesses, by whom the facts in their proper order are established in evidence. Due attention to these remarks will ensure a considerable saving of time to both the session judge and the court. C. O. No. 111 of vol. 4. *L. P.*

Reports of trials to be clear but concise;

1410. It is the duty of a session judge, when he refers a trial, as well as when he disposes of it himself, to give out the whole impression produced by the case on his own mind, in every material view; and to show the process by which he has attained the result. If he considers the prisoner guilty, he ought to account for or reconcile the apparent contradictions in the evidence. Reports *W. P.* 1851, pages 324 and 327. Where the case rests upon circumstantial evidence, it is not sufficient to refer generally to the circumstances on which the judge relies for conviction. He should distinctly specify them, and should set forth fully their scope and relation to the proof, as they appear in evidence. The examination of the difficulties of a case should not be devolved upon the sudder court. The duty of a judge is imperfectly performed, when the material defects in the evidence and the probabilities of the case are passed over without note or comment. Reports *W. P.* 1854, part 1, page 3. The primary responsibility in the determination of guilt or innocence on the legal evidence and proofs in each case, rests with the court which has had the parties and witnesses before it; and the confidence of the sudder court in the care bestowed upon the case at the trial is necessarily shaken, when defects which are apparent on the face of the record have been overlooked in the sessions court. Reports *W. P.* 1854, part 1, page 495.

but should contain the whole dence,

should not be devolved upon the sudder court.

1411. Where a session judge does not fairly grapple with a case; where he fails to give out his distinct impression of the value of the evidence, and its bearing on the prisoner's guilt; where he omits to detect difficulties or discrepancies, opposed to the acceptance of evidence, which a thorough examination and comprehensive view of the *whole papers* would elicit; or where, though he may observe, he fails to inform the court by what process he has overcome or reconciled them; in short, where he throws upon the superior tribunal the burden of any duty or function primarily devolving upon himself; in all these instances, a session judge only very imperfectly discharges the duty required of him by the nature and responsibility of his office: and the court of final resort, in whom is vested by law the ultimate determination of cases involving the liberties and lives of accused criminals, upon perusal of the proceedings and reports alone, has, under such circumstances, just ground of dissatisfaction and complaint. C. O. No. 1047, August 10, 1854. *W. P.*

The session judge fails to perform his duty, if he does not report on the whole of the evidence, or omits to detect difficulties or

1412. In the event of a period exceeding six months having elapsed since the actual transmission to the nizamat adawlut of any trial, in which the sentence or order of the court has not been received, the judge is to notice the same in his letter, accompanying the monthly statements, for the information of the court; stating the names of the prisoners; the crime charged against them; the date of the letter of reference; and the date on which the proceedings were transmitted. C. O. Nos. 167 (para. 5), 175, and 333 of vol. 1.

If the do not on six months, the judge is to be the court.

SECTION XXXII.

OF THE NIZAMUT ADAWLUT.

**Constitution
and
functions.**

Courts where to
be held.

1413. The nizamut adawlut, or superior criminal court, is to be held at Calcutta. *Beng. Reg. IX. 1793, sect. 66.*

1414. A separate court of nizamut adawlut is constituted for the Western Provinces, and it is competent to government to fix the station, at which it is to reside, at such place within the territories belonging to this presidency, as may, from time to time, be deemed expedient. *Ced. Prov. Reg. VI. 1831, sect. 3.*

Number of judges
of which the court
is to consist.

1415. The court is to consist of as many judges, as government may from time to time deem necessary for the despatch of the business thereof. And there are no distinctive denominations or official designations of the different judges. *Reg. XII. 1811, sect. 2, cl. 2. Reg. III. 1829, sect. 2. Reg. VI. 1831, sect. 4.*

Oath to be taken
by the judges.

1416. Each of the judges who may be appointed to the court of nizamut adawlut, previous to the execution of the duties of his office, is to take and subscribe before the court, or before any person whom the government may commission to administer it, the same oath as is required to be taken and subscribed by the judges of the courts of circuit by sect. 34, *Reg. IX. 1793. (See para. 1111.) Reg. II. 1801, sect. 11. Reg. VIII. 1803, sect. 4. Reg. VI. 1831, sect. 5. Reg. III. 1829, sect. 3.*

Appointment
of register, and
oath.

1417. The court is to have a register, who is to be styled register to the court of nizamut adawlut. He is to take and subscribe before the court, previous to entering upon the execution of the duties of his office, the following oath : " I, A. B., register to the court of nizamut adawlut, solemnly swear, that I will truly and faithfully perform the duties of register to this court, according to the best of my knowledge and ability, and that I will not receive, directly or indirectly, any present or nuzzer, either in money or in effects of any kind, from any party in any suit or prosecution to be instituted, or which may be depending, or have been decided in the court of which I am register ; nor will I, directly or indirectly, derive any advantage or emolument whatever from my office, excepting such as the orders of the governor general in council do or may authorize. So help me God." *Reg. IX. 1793, sects. 69 and 70. Reg. VIII. 1803, sect. 7. Reg. VI. 1831, sect. 5.*

Duties which may
be transferred to
register.

1418. It is competent to either of the courts of nizamut adawlut, by an order under the signature of the register of such court, to transfer to such register the duty of preparing appealed cases for trial, and of executing the decrees and orders of the said court, and to authorize him to issue the necessary process, and to proceed thereupon agreeably to the rules prescribed by the general regulations of government. *Act XVII. 1841, sect. 1.*

Deputy and assis-
tant register.

1419. Whenever the government deems it expedient to appoint any persons, not being covenanted servants, to the offices of deputy register or assistant register to either of the

courts of nizamat adawlut, it is competent to such court to assign to such officer any duties at present performed by the register. Act VII. 1840.

1420. It is competent to any judge of the court, to whom this duty is delegated by the court at large, to receive petitions of appeal, or any other petitions receivable by the nizamat adawlut, and to proceed thereupon as the regulations authorize, and direct; so that all such petitions are received in open court; and that no decision or final order be passed thereupon, which is repugnant to a previous decree or order of the court. Any one or more of the judges may also take the depositions of witnesses in open court, instead of causing the same to be taken by the register, in cases where this mode of examination is judged advisable; and, generally, the judges are authorized to regulate the mode and order of their own proceedings, as well as the execution of their process, subject to the rules prescribed by the regulations. All process issued from the court is to be signed by the register, under such instructions as are prescribed by the court for his guidance. Reg. II. 1801, sect. 13. Reg. VIII. 1803, sect. 5.

Receipt of
tions.

Depositions of
witnesses how to
be taken.

Court to regulate
their own proceed-
ings.

Process how to be
issued.

1421. In proceedings before either of the courts of nizamat adawlut it is not necessary to take any security for costs; and it is competent to them to frame such rules of practice for the due exercise of the criminal jurisdiction vested in them by the regulations, as may from time to time be found requisite. Such rules when framed are to be submitted to the governor general of India in council; and after they have been approved by him, they are to be of the same force as if they were inserted in this Act. Act XVII. 1841, sect. 2.

Security for costs
not to be taken.

Court may frame
rules of practice,

which are to be
submitted to go-
vernment.

1422. The court of nizamat adawlut is to be an open court, and is to meet as often as the state of business may require. The ordinary sittings of the court are to be holden once in each week, and special sittings are to be summoned when necessary. A regular diary is to be kept of the proceedings of the court; but is not to be recorded in English further than the court may find convenient and conducive to regularity. The court is to furnish attested copies and translations of its proceedings in cases where a reference may be competent to government. Reg. IX. 1793, sect. 68, Reg. II. 1801, sect. 13. Reg. VIII. 1803, sects. 5 and 6. Reg. VI. 1831, sect. 7, cl. 1.

To be an open
court.

Sittings.
Diary.

Copies and trans-
lations of proceed-
ings in cases re-
ferred to govern-
ment.

1423. The proceedings of the court are not required to be kept in English further than the court may find convenient and conducive to regularity; nor will copies of the proceedings be hereafter required except in cases of appeal to Her Majesty in Council, or of reference to government, as prescribed by the regulations; in which cases attested copies and translations are to be furnished as heretofore. Reg. II. 1801, sect. 16.

Proceedings not to
be kept in English
further than is con-
venient.

1424. The nizamat adawlut has cognizance of all matters relating to the administration of justice in criminal cases, and the police of the country; and is to submit to the governor general in council such regulations regarding these subjects as it may deem advisable. The court is to exercise all the powers that were vested in it, whilst it was stationed at Moorshedabad, and superintended by the late naib nazim, the Nawab Mahomed Reza Khan. Reg. IX. 1793, sects. 72 and 73. Reg. VIII. 1803, sect. 2. Reg. VI. 1831, sect. 6.

Extent of
zance.

Power to direct subordinate courts ; and to construe the regulations.

1425. The nizamat adawlut are empowered to prescribe the forms and conduct to be observed by the sessions courts, and the magistrates, in all cases provided for by the regulations agreeably to their construction thereof. *Beng. and Ben. Reg. X. 1796, sect. 3. Ced. Prov. Reg. XXII. 1803, sect. 3.*

Orders of court in W. P. not in force in L. P.

1426. Circular orders issued by the Western court are not in force in the lower provinces. Letter of N. A. to Judge of Jessore No. 357, April 8, 1853.

Futwas and sentences.

Sentences of court to be regulated by Mahomedan law.

1427. The sentences of the court are to be regulated by the Mahomedan law, excepting in cases in which a deviation from it may be expressly directed by any regulation passed by the governor general in council. Reg. IX. 1793, sect. 74. Reg. VIII. 1803, sect. 9.

Duties of law officers and mode of taking futwas.

1428. The Mahomedan law officers are to assemble at the office of the register three times in every week, or oftener if necessary ; and the register is to lay before them the vernacular copies of the proceedings in the trials, that are referred by the sessions courts for the final sentence of the nizamat adawlut. After duly considering the proceedings, and previous to leaving the office of the register, they are to state in writing, at the foot of the record of each trial, whether the futwa of the law officer is consistent with the evidence, and conformable to the Mahomedan law ; and if it be not, they are to state what futwa ought in their opinion to have been delivered, and to subscribe their names and affix their seals to their respective opinions. The register is to submit the proceedings, in the cases so revised by the law officers, to the nizamat adawlut at their next meeting ; when the court, after perusing the proceedings of the sessions court, and the futwas of the law officers of both courts, is to pass the final sentence. Reg. IX. 1793, sect. 77. Reg. VIII. 1803, sect. 12.

A single law officer may give futwa, unless he differs from law officer of sessions court.

1429. Whenever, from the number of trials in reference, it is requisite for their speedy decision that they should be divided among the law officers for revision, it is competent to any one of the law officers to deliver a futwa thereupon. Provided, that if any one of the law officers, on revising the proceedings held upon the trial, does not concur with the law officer of the sessions court, before whom the trial was held, as to the conviction of the prisoner, he is not to write the futwa, until one or more of the other law officers of the nizamat adawlut can deliver the same in concert with him after perusal of the proceedings. Reg. VIII. 1808, sect. 7.

But futwa need not be taken in every case. The judges may use their discretion in requiring a futwa.

1430. But it is not necessary that a futwa be filed by the law officers in every case that is referred for the final sentence of the court ; the judge or judges, by whom the proceedings are reviewed, are to exercise their discretion in requiring a futwa or otherwise, as appears to them expedient or necessary, excepting in cases in which exemption from the futwa is prescribed by section 5 of this regulation ; [i. e. cases in which persons not professing the Mahomedan faith claim to be exempted from trial according to the Mahomedan law. See para. 1244.](a) Reg. VI. 1832, sect. 6.

(a) Under the above rule the court now never call for a futwa, except when, in a case tried in a sessions court before a law officer, the session judge recommends a sentence of death, or in any special case where a reference is thought necessary. But the rules in sect. 4, Reg. IX. 1831, regarding the powers of a single judge, had previously rendered unnecessary the futwas of the law officers of the nizamat adawlut, except in the cases above noted ; for by them (see paras 146 et seq.) a

1431. On receipt of the proceedings upon trials referred to the nizamut adawlut in pursuance of section 2 of this regulation [i. e. cases in which the session judge differs from the futwa of his law officer] the Mahomedan law officers of that court are to write their futwas thereupon, as in other trials referred under the general regulations. Reg. XVII. 1817, sect. 3.

Futwa in cases referred on account of difference between the session judge and law officer.

1432. In all cases of murder, mutilation, or severe personal injury, in which the heir of the slain, or the person injured, refuses to prosecute, the law officers of the nizamut adawlut are to be called on to declare what the futwa would have been in the event of their having prosecuted; and the judge or judges sitting on such trial are to pass sentence under the general regulations, and on a consideration of all the circumstances of the case, the same as if the parties had come forward to prosecute. Reg. IV. 1822, sect. 3.

If the heir or person injured in cases of murder, wounding, &c., refuses to prosecute.

1433. In all trials transmitted by the sessions courts to the court of nizamut adawlut, in which the Mahomedan law officers of that court consider the prisoner or prisoners liable to discretionary punishment, they are to declare the same generally with a statement of the grounds on which the prisoners are adjudged by them subject to discretionary punishment, leaving the measure of punishment, in such cases, to be determined by the judges of the nizamut adawlut under the provisions contained in this or any other existing regulation. Reg. LIII. 1803, sect. 7, cl. 1.

Futwa tationary ment to generally.

1434. The several provisions made by clauses 2, 3, 4, 5, and 6* of section 2 of this regulation for the guidance of the sessions courts, in cases wherein the law officer declares a prisoner or prisoners liable to discretionary punishment; and wherein a specific punishment has been fixed and declared by the regulations; or wherein the specific penalties of the Mahomedan law are withheld, on the ground of the evidence against the prisoner not being such as the law requires for a sentence of *hudd* or *kisas*, though sufficient to convict the prisoner on strong presumptive proof; or wherein the sentence of *hudd* or *kisas* is barred against the prisoner, though fully convicted, by some special exception or distinction, not affecting the nature and criminality of the offence, and evidently repugnant to the principles of equal justice; are to be considered equally applicable to all cases of the same descriptions wherein the law officers of the nizamut adawlut, in any trials before that court, declare the prisoner or prisoners liable to discretionary punishment; and the judges of that court are to pass sentence accordingly, after taking a second futwa from their law officers in cases which may require it. Reg. LIII. 1803, sect. 7, cl. 2.

Rules enacted for sessions courts in regard to discretionary punishment are equally applicable to trials before the nizamut adawlut.

* v. paras. 1308 to 1313.

1435. In trials referred to the nizamut adawlut, under cl. 7, sect. 2 of this regulation, viz. when the crime of which the prisoner is convicted, and for which he is declared liable to discretionary punishment, has not been specifically provided for, either by the regulations, or

Discretionary punishment in cases in which the crime has not been provided for by the

single judge may reverse or alter the sentence of the lower court in favor of the prisoner in called-for trials; and may pass any sentence short of death in concurrence with the lower court in referred trials; and is required to send on the case to another judge only when he differs from the session judge as to the conviction, or would pass a higher sentence than the latter recommends; without any reference to the futwa given in the nizamut adawlut. On this account it has been considered unnecessary to give in the text the rules of sect. 4, Reg. XVII. 1817, and sects. 2 and 7, Reg. IV. 1822, which provide for cases in which the judges of the nizamut adawlut would pass sentence of conviction or acquittal in opposition to the futwas of their law officers.

regulations or by
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In such cases of
magnitude the
court is to propose
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government.

Sentence to be
in cases of
murder and theft.

Rules for carry-
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Power to call
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by any stated penalty in the Mahomedan law, the judges of the nizamut adawlut, provided the offence be punishable at discretion under the Mahomedan law, and they are satisfied of the conviction of the prisoner, are authorized to pass such sentence upon the prisoner, not extending to capital punishment, as they may deem adequate to the crime of which he is convicted, and consonant to the general principles of justice, on due consideration of all the circumstances of the case. The court is at the same time to propose to the governor general in council a regulation to fix and declare the specific punishment of any crime of magnitude, which may be found not to have been specifically provided for either by the Mahomedan law or by the regulations, and which may appear to call for an express denunciation of the penalty to be incurred by committing the same. Reg. LIII. 1803, sect. 7, cl. 3.

1436. The provisions contained in sections 3, 4, and 5 of this regulation [regarding dacoity and theft] are to govern the sentences of the nizamut adawlut in the cases therein specified; and the judges of that court are authorized to adjudge the stated punishment, whatever may be the futwa of their law officers; provided that it declares the prisoner or prisoners to have been convicted of the crimes incurring the stated penalties either on free and voluntary confession, or on the testimony of credible witnesses, or on strong circumstantial evidence (sufficient to establish *ghalibzun*, or violent presumption of guilt); and provided the judges of the nizamut adawlut see no cause to disapprove such conviction of the prisoner or prisoners; or to mitigate, or remit the specified punishment. Reg. LIII. 1803, sect. 7, cl. 4.

1437. The register, within three days after passing of the final sentence, or sooner if practicable, is to transmit a copy of it under the seal of the nizamut adawlut, and attested with his official signature, to the session judge, who is immediately to issue a warrant to the magistrate to cause the sentence to be carried into execution. The magistrate, upon the receipt of the warrant, is to cause the sentence to be executed without delay; and to return the warrant to the session judge, with an endorsement attested by his official seal and signature, certifying the manner in which the sentence has been executed. All warrants so returned are to remain in the sessions court, excepting warrants for the infliction of capital punishment, which are to be forwarded by the judges to the nizamut adawlut. Reg. IX. 1793, sect. 78. Reg. VIII. 1803, sect. 13.

1438. It is at all times lawful for the courts of nizamut adawlut to call for the records of any criminal trials of any subordinate court, and to pass upon them such orders as may seem fit. But it is not lawful for the nizamut adawlut in cases so called for, or for any criminal court in appeals preferred to it, to enhance any punishment awarded, or to punish any person acquitted by the court below. Reg. IX. 1807, sect. 24. Act XXXI. 1841, sects. 3 and 4.

1439. The nizamut adawlut in any case in which it appears to them, upon a review of the abstract statements or calendars of prisoners punished without reference, that the sentence passed is one which cannot lawfully be passed on a person convicted of the offence as stated in the abstract statement or calendar, are to annul the sentence, and to certify to the subor-

dinate court the sentence or sentences which may lawfully be passed for such offence: and thereupon the subordinate court is to pass a new sentence according to law, and is to amend the record in accordance therewith. Act XIX. 1848, sect. 2.

1440. In any case in which it appears to the nizamut adawlut, upon a review of the abstract statements or calendars of prisoners punished without reference, that the verdict or judgment pronounced on any prisoner was not warranted by the evidence, or that his sentence was too severe, it may, if it thinks fit, require the judge of the court in which the conviction was had to certify under his hand all the evidence taken in the case affecting such prisoners, with any observations which the judge may be desirous of making in explanation of the verdict, judgment, and sentence; and thereupon the nizamut adawlut may annul such verdict, judgment, and sentence if the verdict or judgment appears to it not warranted by the evidence, or mitigate the sentence if it appears too severe; and in either case is to certify its proceedings to the court in which the conviction was had, which is thereupon to make such orders as are conformable to the decision of the nizamut adawlut, and, if necessary, to amend the record in accordance therewith. Act XIX. 1848, sect. 3.

1441. Instead of proceeding under this Act, the nizamut adawlut may, whenever it thinks fit, call for the whole record of any criminal trial in any subordinate court, and pass thereon such orders as it thinks fit, but not so as to enhance the punishment awarded, or to punish any person acquitted in the subordinate court. Act XIX. 1848, sect. 4.

1442. In any jurisdiction, in which a superintendent of police has not been appointed under Act XXIV. 1837, cases of a miscellaneous nature, other than criminal trials, are not cognizable by the nizamut adawlut. In such miscellaneous cases an appeal lies from the magistrate to the commissioner of circuit in his capacity of superintendent of police, whose decisions are not to be open to revision otherwise than on a regular suit in a civil court. Provided, however, that this is not to be held to preclude the government from issuing any orders that they may see fit, consistently with the existing regulations, in any case that may be brought to their notice by the nizamut adawlut or otherwise. Reg. IX. 1831, sect. 3. Act XXIV. 1837, sect. 3.

1443. The interference of the nizamut adawlut in such jurisdiction is restricted by the above to "criminal trials," i. e. cases involving a judicial investigation on a criminal charge and judicial award. In all other cases which are contradistinguished as "miscellaneous cases" the appellate authority is transferred to the commissioner of circuit, with a reservation of a further appeal to the government, in those cases in which the party deeming himself aggrieved may prefer that course, instead of resorting immediately to the civil courts [as in cases of dispossession or other actionable cause], or on which the nature of the case will not admit of the remedy by civil action [as in the case of alleged injustice towards native officers of government by magistrates or others to whom they are subordinate]. For the former the ordinary remedy by suit is provided; for the latter an appeal to government. Const. Nos. 914 and 662.

1444. Orders passed by the subordinate criminal courts in judicial proceedings other than criminal trials are not cognizable or open to revision by the nizamut adawlut, and in

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In a jurisdiction to which a superintendent of police

Government may pass any orders in any case.

Definition of criminal trials and miscellaneous cases in the above.

Orders in

trials, are not open to revision. regard to such cases the nizamat adawlut possesses no jurisdiction. Such being the case, it cannot assume to itself jurisdiction on the ground that the orders passed by the session judge are unwarranted or irregular. Reports *L. P.* 1851, page 1453.

Revision of case by a magis- 1445. A trial having been held in Assam before the magistrate, and referred to the nizamat adawlut by the commissioner on a revision of the magistrate's proceedings without holding a fresh trial, it was held competent to the court to pass sentence on the prisoner in the absence of such trial by the commissioner. N. A. R. vol. 5, page 8.

Revision of in- orders the English sittings. 1446. Cases, in which interference with any order issued by an inferior court, prior to its final judgment in such trials, appears necessary, are to be brought before the court at its general English sittings. Const. No.

Power of mitigation of sentence of subordinate court ; * v. ¶ 1457. 1447. The powers vested in the nizamat adawlut by sect. 3, Reg. XIV. 1810 [to grant such remission or mitigation of punishment, as appears just and proper, according to the evidence and circumstances of the case, and to pass sentence accordingly*] are applicable to all cases in which that court revises a sentence passed by a sessions court, or magistrate, or assistant to a magistrate, in pursuance of the above, or under any other provision in the regulations. It is also applicable to any cases in which the court of nizamat adawlut sees reason to revise a sentence passed by that court, and to remit any part of the punishment adjudged. But this discretion is not to be exercised without strong and sufficient grounds, to be recorded at large upon the proceedings of the court. Reg. XIV. 1810, sect. 4.

When judges differ in opinion. Rules for awarding sentence, when the judges differ. 1448. In a criminal trial, wherein differing opinions have been recorded, the sentence should issue according to the opinions of the majority, as regards each prisoner ; and, where the difference relates merely to the amount of punishment, the most lenient sentence should be adopted. Const. No. 952.

Difference of opinion to be settled by majority. 1449. In the event of any difference of opinion arising when three judges are present in court, the voices of the majority are to determine the question ; but if a difference of opinion arises when two judges only are present in court, the question then before the court is to be postponed for adjudication, until a third judge attends. Reg. II. 1801, sect. 13. Reg. VIII. 1803, sect. 5.

Concurrent opinion of two judges is final. 1450. The concurrent opinion of two judges, who agree in all points of the decision, is final and conclusive, though it differs from the opinions of two other judges who do not agree with each other. Const. No. 526. N. A. R. vol. 2, page 121. So, where two judges agreed in the acquittal of the prisoners though on different grounds, the concurrence was held to overrule the opinions of two judges, who would have convicted, but differed as to the amount of punishment to be awarded. Reports *L. P.* 1855, part 1, page 560.

When the judges cannot decide is to be referred to the court of nizamat adawlut. 1451. Whenever, and so often as only one judge is present with the Western court, or if any difference of opinion arises when only two judges are present, in any matter requiring under the existing regulations the concurrent voices of two judges, the question is to be referred for the determination of one of the judges of the Calcutta court of nizamat adawlut. Provided, moreover, that, in such case, it is sufficient that the judge, to whom the point is referred, forms and records his judgment on a careful perusal and consideration of the proceedings,

and without requiring the attendance of the parties or their vakeels. Reg. VI. 1831, sect. 7.

1452. Whenever and so often as there are four judges present at the court of nizamat adawlut at Calcutta, and there is an equality of voices in cases which require a decision by the majority, it is competent to refer the question for decision to a judge of the nizamat adawlut in the Western provinces; and it is sufficient that the judge, to whom the point is referred, should form and record his judgment on a careful perusal and consideration of the proceedings, and without requiring the attendance of the parties or their vakeels. Reg. IX. 1831, sect. 9.

1453. In a case of four prisoners charged with dacoity, the second judge voted for the conviction of No. 1, and the acquittal of the other three; the fourth judge for the conviction of all; and the officiating judge for the conviction of No. 1 as a receiver only, and for the acquittal of the other three. Under these circumstances, sentence was issued under the signature of the three judges conformably to the majority of opinions in regard to each individual; No. 1 was convicted of dacoity, and the other three were acquitted. N. A. R. vol. 2, page 40.

Examples of in which the judges did not agree as to the sentence to be passed on all the prisoners, and sentence was consequently issued according to the majority of voices in regard to each individual.

1454. In a case of two prisoners, there being three judges for the conviction and one for the acquittal of the first, and two for the acquittal and two for the conviction of the second; another judge took up the proceedings with reference to the latter prisoner only, and being of opinion that he should be acquitted, an order for his release was issued. In deference to the majority, this order was signed by two judges, one of whom had originally given his voice for conviction. N. A. R. vol. 2, page 483. So, in another case, vol. 2, page 485.

1455. In a case of nine prisoners, the court not being able to decide by a majority of voices as to the sentence to be passed on all, one of the judges modified his opinion by reducing the term of imprisonment proposed by him to be awarded to one of the prisoners, in order to admit of the issue against each individual of a sentence by a majority of the court. N. A. R. vol. 3, page 76.

1456. On the trial in the Calcutta Court of two prisoners, charged with murder, three judges were for a sentence of death, and one for a sentence of imprisonment for life, against the first prisoner; and two judges for death, and two for perpetual imprisonment, against the second. The case was referred to the Western Court, when, one judge concurring in sentencing the second prisoner to imprisonment for life, he was sentenced accordingly, and the first prisoner was executed. N. A. R. vol. 4, page 154.

1457. In all criminal trials before the nizamat adawlut, if a prisoner, or prisoners, be in any case, under the provisions of the laws and regulations in force, liable to a more severe punishment than appears to the court equitable, it is competent to two or more judges (but now a single judge under the provisions of sect. 4, Reg. IX. 1831*) to grant such remission, or mitigation of punishment, as appears just and proper, according to the circumstances of the case, and to pass sentence accordingly; provided that in all such cases the court is to record the grounds upon which a remission or mitigation of punishment is adjudged, under

Power of mitigation

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Reason of such to be recorded and notified to the sessions court.

the discretion hereby vested in them ; and they are to communicate the same to the sessions court before whom the trial was held, with directions to cause the same to be made known in open court to the prisoner or prisoners concerned. Reg. XIV. 1810, sect. 3.

The court can-
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1458. The nizamat adawlut are competent to mitigate a sentence on judicial grounds apparent on the record, and strictly connected with the case, and not extraneous. If the ground of mitigation is personal to the prisoner, the prerogative of mercy rests with government. Const. No. 350.

The court may
recommend for
pardon persons
sentenced to
death.

1459. When a criminal, who has been sentenced to suffer death, appears to the nizamat adawlut to be a proper object for mercy, they are to submit his case to government ; and, according to the circumstances of it, either recommend a pardon to be granted to him, or such commutation of the punishment as to the court seems proper. Reg. VIII. 1803, sect. 14.

Government may
in all cases pardon
a person charged
with, or convicted
of a criminal
offence.

1460. Nothing contained in this, or any other regulation, is to be understood to preclude the governor general in council from the exercise of the power reserved to the chief executive authority in all cases, when it appears proper to pardon any person charged with, or convicted of, a criminal offence. In all such cases, a letter from the secretary to government, addressed to the register of the nizamat adawlut, or to any magistrate, or to any other local authority, is to be deemed a sufficient voucher of the pardon thereby notified, and is to be observed accordingly.(a) Reg. XIV. 1810, sect. 6.

Sentence is to be
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1461. In cases of clear conviction, when, from considerations of policy or other reasons, it is deemed expedient not to punish the offenders, sentence should be passed, and a reference made to government, before directing execution of such sentence, to afford the government an opportunity of exercising its prerogative of pardon. N. A. R. vol. 5, page 31.

(a) The following cases in which prisoners have been pardoned by government after conviction, are taken from the Nizamut Adawlut Reports :—

A murder was committed in Cuttack on the very day the province was declared subject to the British laws ; the prisoners therefore might, as they pleaded, have been ignorant of the fact ; and in consideration of this circumstance, and of the habits of lawless violence which prevailed with impunity under the Mahratta government, the prisoners were discharged without punishment. Vol. 1, page 106.

A sentinel, in the service of a Mahratta chief who was on a pilgrimage to Benares, was convicted of wilful murder, in cutting down a man (supposed to be a thief) who did not answer to a third challenge, in conformity to a general order to that effect from his superior. The prisoner was pardoned on the consideration that he acted under a mistaken sense of duty. Vol. 1, page 158.

A Rajkoomar was convicted of destroying his infant daughter, and sentenced to suffer death. But, as it appeared that the proclamation for preventing the murder of new-born children, directed by sect. 11, Reg. III. 1804, had not been published in the pergunnah in which the prisoner resided, and as the magistrate had but recently interfered in the police of the pergunnah, so that it was not improbable that the prisoner might have been ignorant of the prohibition of the British government, he was pardoned. Vol. 1, page 209.

An attack was made on a small village in Arracan by a party of hill people of a distinct tribe, in which fourteen persons were murdered, nine others severely wounded, and five carried off into captivity. No probable motive for the outrage was elicited, the suffering party being either really ignorant or disinclined to tell, and the defendants not adducing any. Out of 24 prisoners 15 were convicted and sentenced to death or imprisonment in banishment for 14 years ; but as it seemed clear that the prisoners all surrendered under an implied assurance of their obtaining forgiveness, and that it was quite impossible that they could have been constrained if they had not been persuaded to give themselves up, and as therefore it would have been as unjust as impolitic to carry the judgment into effect, they were pardoned. Vol. 5, page 81.

1462. The sittings of the court are to be held before two or more judges, whenever the number of trials and other business depending before the court may admit of it. But whenever the number of depending trials renders it necessary for their speedy determination that the judges should hold separate sittings, it is competent to any one judge to hold a sitting of the court, and to pass orders or sentence upon any trial under reference to it, in conformity with the regulations; provided that, if the single judge so sitting does not concur with the session judge, before whom the trial has been held, with respect to the conviction of the prisoner, he is not to pass sentence until one or more of the other judges of the court can sit with him upon the trial. Reg. VIII. 1808, sect. 6.

Powers of single judge.

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1463. The above provision, which includes all instances of a difference of opinion upon the guilt or innocence of a prisoner, is extended to all cases in which the session judge, before whom the trial has been held, may recommend a mitigation of punishment, upon grounds which a single judge, holding the sitting of the court, deems insufficient. In such cases the opinion of another judge of the nizamat is to be taken upon the mitigation proposed by the session judge; and in giving such opinion he is to examine the proceedings upon the trial as far as is necessary to enable him to form a judgment upon the stated grounds of mitigation. Reg. XVII. 1817, sect. 17.

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1464. The above rule authorizes a sitting of the court before a single judge (when two or more judges are not able to attend) upon miscellaneous references to or from the sessions courts and magistrates, upon petitions receivable by the nizamat adawlut, and generally upon all matters appertaining to the cognizance of that court under the regulations in force. But a single judge cannot in any case by his single authority reverse or alter a former decision or order of one or more of the judges of the court. Reg. XXV. 1814, sect. 17.

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1465. When a session judge, referring a criminal trial to the nizamat adawlut, states circumstances of extenuation, or other special grounds for a mitigation of punishment, in behalf of any prisoner or prisoners, and a single judge of the nizamat, holding the sitting of that court, concurs in the mitigation of punishment recommended by the sessions judge, it is

Power of single

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In the following case the nizamat adawlut remitted the punishment on judicial grounds:—A prisoner was convicted on violent presumption of being an associate in Wuzcer Ali's conspiracy. But the orders of government on a former and similar occasion having given him hopes of exemption from punishment, and the evidence showing some extenuating circumstances in his favor, orders were issued for his release. Vol. 1, page 227.

The two cases quoted beneath are apparently opposed to the rule of Const. No. 850 (para. 1458), as the sentences of punishment were in both remitted on grounds purely personal to the prisoner; but they are probably not considered precedents, as that construction was ruled subsequently to the dates of both:—A prisoner was convicted of cutting off his wife's hand under the impulse of anger; but it appeared that he had just cause for anger, and that the actual violence was unintentional; and the wife earnestly entreated that her husband should be pardoned. Under these circumstances, and as the futwa declared the prisoner unconditionally released from every penalty in consequence of the injured party withdrawing her claim, he was discharged without punishment. Vol. 1, page 844.

Two females were convicted with their husbands of knowingly receiving stolen property; but from the influence known to be exercised by husbands over their wives, and under a futwa of discretionary punishment, the court did not think fit to award the females any punishment. A third female, aged 70 years, was convicted of the same offence, and released in consideration of her age and infirmities. Vol. 1, page 858.

competent to the judge so concurring to grant the proposed mitigation, and to pass sentence accordingly ; in like manner as two judges are competent to grant a mitigation or remission of punishment, whenever it appears just and proper, under the provisions of sect. 3, Reg. XIV. 1810.* Reg. XVII. 1817, sect. 18, cl. 1.

* v. ¶ 1457.

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1466. A single judge of the nizamut, holding the sitting of that court on a criminal trial, is further declared competent to mitigate or remit any part of the prescribed punishment, if it appears to him just and proper on the grounds stated in the above provision, although a mitigation or remission is not proposed by the judge referring the trial ; but in such cases the grounds on which a mitigation or remission of punishment is granted, are to be recorded and communicated to the sessions court for the information of the prisoner or prisoners concerned. Reg. XVII. 1817, sect. 18, cl. 2.

Single judge may
reverse or alter the
sentence of the
lower court in fa-
vor of the prisoner.

1467. It is competent to a single judge, on a revision of the proceedings held on any criminal trial by any court of inferior jurisdiction, to reverse or alter the sentence or order passed thereon, provided such reversal or alteration is in favor of the accused, whether for acquittal, mitigation of punishment, or otherwise, and does not enhance the punishment to which he has been sentenced. Reg. IX. 1831, sect. 4, cl. 2.

Example.

1468. In a trial for murder the law officer of the circuit court acquitted the prisoner ; the commissioner dissenting referred the trial with his opinion that the prisoner was guilty of affray with homicide ; the law officer of the nizamut also acquitted ; but the judge, who revised the trial, deemed the prisoner convicted of manslaughter. The court held that he was competent to dispose of the case without calling in another judge. Const. No. 674.

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1469. Whenever a criminal trial is referrible to the nizamut adawlut by reason of the commissioner of circuit or session judge differing in opinion with his law officer as to the conviction or acquittal of one or more prisoners included in the same trial, the sentence in which in regard to the other prisoners is within his competence under the regulations in force, it is necessary for the nizamut adawlut, or for a single judge of that court, to revise only such parts of the proceedings on the trial as relate to the prisoner or prisoners in respect to whom the reference is made. Reg. IX. 1831, sect. 4, cl. 3.

Single judge may
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1470. If a single judge of the nizamut adawlut concurs in opinion with the commissioner of circuit or session judge, whether for conviction or acquittal, it is competent to such single judge to pass a final sentence, whatever may be the futwa of the law officers of the nizamut adawlut, except for capital punishment, which as heretofore, in all cases, requires the concurrent opinion of two judges of the court. Reg. IX. 1831, sect. 4, cl. 4.

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1471. Provided, however, that is is not competent to a single judge to convict and sentence to punishment any prisoner in opposition to the opinion of the commissioner or sessions judge, if the latter is for acquittal, or otherwise in favor of the prisoner. Reg. IX. 1831, sect. 4, cl. 5.

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ther judge.

1472. It is not competent to a single judge to convict and sentence to punishment any prisoner recommended to be acquitted by a session judge against the opinion of the law officer for conviction. If the opinion of the judge of the nizamut adawlut be for conviction,

the case is to be sent on for the concurrence of another judge of the court. Resolution, N. A., August 13, 1852.

1473. In the cases above referred to, the nizamat adawlut is not precluded from revising the whole proceedings, if there appear sufficient grounds for so doing. Reg. IX. 1831, sect. 4, cl. 6.

Nizamut

1474. A single judge may always, in any case of difficulty or importance in which he deems it expedient and proper that the matter at issue should be decided by two or more judges of the court, record his opinion thereon, and refer the case to another judge. Reg. IX. 1831, sect. 4, cl. 7.

Single judge may always require the opinion of his colleagues.

1475. In trials referred to the nizamat adawlut, which include one or more prisoners liable to a sentence of death, it is not competent to a single judge to pass the final sentence, which in all such cases is to be passed by at least two concurring judges of that court. Reg. XII. 1825, sect 8.

Sentence of death cannot be passed by a single judge.

1476. The jurisdiction of the presidency court of nizamat adawlut over the province of Benares, and the ceded and conquered provinces, having been transferred by Reg. VI. 1831 to the Western court, it was held that the latter court possesses the whole of the powers, in regard to the revision of orders and sentences passed by the court at the presidency before the enactment of that regulation, which could have been exercised by the latter previously to the separation of the jurisdictions. Const. No. 799.

Interference with former order of the court.

How far the court may or annul a previous order or sentence of the court.

1477. The judges of the Western court are competent, whenever it appears advisable on the representation either of one of their own body, or any other constituted criminal authority, to revise, in full court, the proceedings of one or more judges in any case connected with the districts under their jurisdiction, as well as to modify or annul the sentence or order previously passed, either on the grounds of additional evidence or other circumstance throwing a new light on the case, or generally with reference to the previous decision, provided that no sentence of a criminal court can be modified to the prejudice of the prisoner or prisoners included in it. If the judge, or any of the judges who passed the original sentence, be present, the revision is to be made by him ; provided that, if two or more judges concurred in the order or sentence, and any of them is not present, the case must be brought before the whole court, if it is proposed to modify or annul the order or sentence. Const. No. 819.

Rule of the Western court.

If the judge who passed the sentence is or, if absent.

1478. This rule does not hold in the Calcutta court, by whom Const. No. 819 was rescinded ; the court resolving that when review of a criminal order passed by a judge of the court, present at the time of the application, is applied for, it shall be disposed of by him, without reference to the other judges of the court. If the application be for a review of an order passed by a judge absent on leave, or no longer attached to the court, the provisions of sect. 17, Reg. XXV. 1814* shall be the rule of procedure. C. O. No. 67 of vol. 4, *L. P.*

Rule of the Calcutta court.

* See page 1464.

1479. A petition having been presented to the nizamat adawlut, praying for the release of a prisoner formerly sentenced by the court, it was held that they had no power to interfere with the sentence on the ground of their entertaining a difference of opinion as

court differs as to

the merits of the case, or as to the quantum of punishment awarded. N. A. R. vol. 2, page 477.

A single judge, finding that he had passed sentence on an exaggerated statement, modified it with the consent of his colleagues.

1480. In a case, where a prisoner had evaded justice at the time when his accomplices were tried, but on his being afterwards apprehended and brought to trial circumstances came out which induced the belief that the offence previously charged had been exaggerated, it was decided that the judge, who passed sentence on the first trial, was competent, with the concurrence of his colleagues, to revise or modify the order passed by him without the interference of another judge. N. A. R. vol. 4, page 246.

The court would not order the re-apprehension of persons sentenced 15 years before for affray, when they ought to have been punished for murder.

1481. On the reference of a case of assault and murder perpetrated 15 years before, it was discovered that two prisoners implicated in the same transaction had been regularly tried, convicted, and sentenced to only one year's imprisonment, and that the sentence had been reported, as prescribed, to the nizamut adawlut, and confirmed as for a case of simple affray; the court held that it was not expedient to direct their re-apprehension with a view to their being tried and sentenced to a punishment adequate to the real merits of the case. N. A. R. vol. 3, page 164.

Miscellaneous.

Power of nizamut adawlut to suspend a session judge; and course of procedure when a session judge or

, &c.

* r. ¶ 1119.

1482. The nizamut adawlut is empowered to suspend from office any session judge, or magistrate, for wilful disobedience, or neglect of or false return to any process, rule, or order of that court; such suspension to be notified within ten days, with all relative proceedings and papers, for the determination of government. The nizamut adawlut is further authorized and directed to proceed upon reports from the session judges of neglect or misconduct by the magistrates, made in pursuance of sect. 63, Reg. IX. 1793 (*Ced. Prov.* sect. 30, Reg. VII. 1803)*; as well as upon reports from the session judges, and magistrates, of neglect or misconduct by their assistants, made in pursuance of sect. 10, Reg. XIII. 1793 (*Ced. Prov.* sect. 13, Reg. XII. 1803);† in which cases, after such inquiry as is judged necessary, in proof or explanation of the circumstances stated, the court is to report the case, if it appears to require the notice of government, with a copy of all proceedings and papers received on the subject of it, for such orders as may be judged proper. And in all cases wherein a covenanted servant of the Company employed in any of the criminal courts, or in any office of police, appears to the nizamut adawlut to have been guilty of neglect of duty, or of other misconduct, not expressly provided for by the regulations, that court is either to report the same to government; or, if the case appears to involve an error of judgment only, or a slight default, for which an admonition of the court is deemed a sufficient correction, to advise the party of his default, and to admonish him accordingly. Reg. II. 1801, sect. 14. Reg. VIII. 1803, sect. 24.

Order of court is not binding on civil court.

1483. A summary order of the nizamut adawlut to the magistrate is not binding on the civil courts. Const. No. 609.

The court would not cancel a decree of a civil court if a criminal to have obtained by

1484. It appearing in the course of a criminal trial, that a decree had been obtained in a civil suit by means of fraud, the court did not think proper to cancel the decree; but directed that the parties, against whom it had been obtained, should be furnished, on their application, with a copy of their sentence for presentation to the court of appeal, which court

could then use their own discretion in passing such orders as might prevent an unjust execution. N. A. R. vol. 3, page 93.

1485. The vakeels of the sudder dewanny adawlut may present petitions to the nizamat adawlut. Const. No. 563.

Vakeels.

1486. The nizamat adawlut is, from time to time, as circumstances require, to prescribe the forms, and to fix the periods of transmission, and mode of preparation of all reports, calendars, registers, or other statements, to be furnished by the criminal courts, or by the judicial or police officers. But this is not to be construed to supersede the necessity of the preparation and transmission of the reports and statements prescribed by the regulations, until the nizamat adawlut specially prescribes any alteration in, or directs the discontinuance of, any particular report or statement. Reg. VII. 1829, sect. 3.

The adawlut is to prescribe reports, statements, &c.

1487. *First.* All precepts are to be drawn out in prescribed forms.* *Second.* All orders directing the issue of precepts are to state whether a return is required, and within what period. *Third.* The period is to be calculated from the date of the despatch of the precept from the office of the nizamat adawlut. *Fourth.* Precepts and returns are to bear the dates of despatch, and not the dates of the proceedings which accompany them, and the subordinate courts are expected to despatch their returns within the period allowed. *Fifth.* When a judge of the nizamat adawlut has signed a chitteh, directing the issue of a precept, it is the duty of his peshkar to prepare a copy of the roobakarree, duly attested by his signature, together with such other papers as should accompany the same, and to send them by a mohurir to the English clerk in the precept department within seven days from the date on which the chitteh was signed by the judge. The roobakarree is to bear a list of the accompanying papers at the foot of it; and the peshkar is responsible that they are correct and complete. *Sixth.* The English clerk is to note on each proceeding the date of receipt, and after preparing the precepts to submit them for the register's signature; he is then to enter them in the proper books, and to despatch them on the same day, if possible; if not despatched till the next day, or later, the date of the precepts is to be altered to correspond with that of despatch. *Seventh.* If the officer to whom the precept is addressed finds it impracticable to send a complete return within the prescribed period, he is to transmit a proceeding, with a certificate, according to the prescribed form,† stating the reasons, and the additional period which he requires to carry the court's orders into effect. *Eighth.* Such returns and certificates, when received in the office of the nizamat adawlut, are to be sent by the precept clerk, after having been endorsed and entered in the proper books, to the peshkar of the judge by whom the precept was issued, who is to note on each the date of receipt, and to bring it forward in the usual course. *Ninth.* If the period allowed in a precept together with the number of days occupied by the letter dāk, expire before a return, or explanatory proceeding and certificate is received, the register is to send a letter calling for explanation within a specified term; should this term also expire without receiving a reply, the circumstance is to be brought to the notice of the judge who issued the order, for such further measures, as he deems advisable. *Tenth.* The officer, by whom a return or certificate is sent, is to cause a list of the papers which accompany it to

Precepts.

Rules for issue of precepts to subordinate courts, and for returns thereto; prescribing forms—of a precept calling for proceedings with return;—a precept requiring no return;—a certificate when a full return cannot be submitted within the prescribed period;

* v. Appendix A. Nos. 56 and 57.

† v. Appendix A. No. 59.

be written at the foot of the roobakaree. *Eleventh.* If the papers, &c., which should accompany a precept or return, are too heavy for the letter dāk, they are to be sent by dāk banghy, with a note stating the case and the precept or return to which they belong; the precept or return itself with the proceedings of the court being sent as usual by the letter dāk. *Twelfth.* The precept clerk is to submit to the register, at the close of each week, a list of unanswered precepts and letters, to which returns are due. C. O. Nos. 160 and 174 of vol. 2.

and a reply to a precept requiring no return.

1488. Whenever a session judge finds it necessary to make a reference to the court connected with precepts not requiring returns, for the purpose either of communicating any information or remarks, or of requiring further instructions, he is to adopt a prescribed form.* C. O. No. 212 of vol. 2.

* v. Appendix A. No. 58.

SECTION XXXIII.

OF SENTENCE OF TRANSPORTATION OR BANISHMENT.

The nizamat adawlut may sentence to transportation any person sentenced to imprisonment for life.

1489. The nizamat adawlut are authorized, under the discretion in this respect allowed by the Mahomedan law, to order any prisoner, sentenced to imprisonment for life, to be transported to some place beyond sea; and the magistrates, at every jail delivery, are to cause a written proclamation to be read, and affixed in their cutcherries, as well as in the cutcherries of their police officers, notifying that all persons who are sentenced to be confined for life for murder, dacoity, robbing, plundering, arson, or any other crime of a heinous nature, are liable to transportation to some place beyond sea by order of the nizamat adawlut. Reg. IV. 1797, sect. 10. Reg. VIII. 1803, sect. 18.

And should always sentence to transportation, unless there are special reasons.

1490. Whenever the sudder court sentences any offender to imprisonment for life, it is at the same time to sentence such offender to transportation beyond sea for life, unless there are special reasons inducing the court to think such prisoner not a proper subject for transportation, which special reasons the court is to record. Act XIV. 1844, sect. 1.

If session judge sentences to, or recommends, a sentence of imprisonment for life, a single judge of the nizamat adawlut is to pass sentence of transportation.

1491. Whenever any offender has been sentenced in the first instance by a commissioner of circuit, or session judge, to imprisonment for life, or whenever a commissioner of circuit or session judge has recommended that sentence of imprisonment for life be passed upon any offender, it is competent to a single judge of the sudder court, and he is directed, to sentence such offender at the same time to transportation beyond sea for life, unless there are special reasons inducing him to think such offender not a proper subject for transportation, which special reasons he is to record. Act XIV. 1844, sect. 2.

Convicts cannot be transported for a limited period. Session judge always to add trans-

1492. Transportation beyond sea is restricted to convicts sentenced to confinement for life; and in all instances wherein a session judge passes a sentence of confinement for life against a prisoner, he is at the same time, if he deems the prisoner a proper object of trans-

portation beyond sea, to adjudge him or her to be transported for life. Reg. LIII. 1803, sect. 8, cl. 2. portation to imprisonment for life.

1493. It is not competent to the nizamut adawlut (except in the exercise of their general powers of mitigation, where they may deem the object worthy of it) to exempt from transportation an individual convicted of an offence for which the regulations specifically prescribe that punishment. N. A. R. vol. 3, page 1. The court cannot exempt from transportation except in the way of mitigation.

1494. Imprisonment in transportation beyond sea for life, is considered a more severe sentence than imprisonment for life in the Alipore jail. N. A. R. vol. 5, page 80. Transportation a more than for life.

1495. In the cases of convicts sentenced to confinement for life, whom the courts of sessions and nizamut adawlut do not consider proper objects of transportation beyond sea under the above provisions; as well as in all cases of convicts sentenced to imprisonment for a limited period; the court by whom the sentence is passed, if it deems the same proper on consideration of the prisoner's offence, may adjudge him to be banished, during the period of his sentence, from the district in which his place of abode is situated, and to be kept to hard labor on the public roads, or other public works, in any other district, to which he may be removed. Reg. LIII. 1803, sect. 8, cl. 2. Convicts not considered proper objects of transportation, or imprisoned for a limited period, may be sentenced to banishment.

1496. Magistrates are not competent, under the regulations, to sentence vagrants, or persons convicted of specific offences, to expulsion from the British territories, or to banishment from the city or district in which they have been apprehended. C. O. No. 159 of vol. 1. Magistrates cannot sentence any person to banishment.

1497. As soon as any offender shall be delivered to the person or persons to be appointed by the governor general in council on that behalf at the place to which he is transported, the property in the service of such offender shall be vested in such person or persons during the term of transportation. Act XVI. 1840, sect. 1. **Management of convicts transported.**
Property in service of, vested in whom.

1498. It shall be lawful for the governor general in council to appoint the governor or other authority at any place within the territories of the East India Company, or to appoint one or more superintendents at any such place, as the persons to whom convicts undergoing transportation shall be delivered and in whom the property in the service of such convicts shall be vested as aforesaid. Act XVI. 1840, sect. 2. Government to appoint persons in whom property is to be vested.

1499. It shall be lawful for the governor general in council to issue orders from time to time to any such governor, authority, or superintendent, and which orders are hereby required to be duly executed, and to frame rules touching the classification of convicts, their confinement, treatment, and discipline, and touching such moderate correction as may be necessary in cases of misbehaviour and disorderly conduct, and of neglect or disobedience in the service of those persons in whom the property of such service may be vested as aforesaid. Act XVI. 1840, sect. 3. Government to issue orders and rules regarding management.

1500. All persons who have heretofore been transported to any place within the territories of the East India Company, and whose terms of transportation are not yet expired, shall be subject to the provisions contained in this Act, and nothing heretofore done with respect to offenders who have been so transported in conformity with the provisions of this Persons previously transported liable to this Act.

Act, or by the orders or with the sanction of government, shall be called in question in any court of law. Act XVI. 1840, sect. 4.

Penal servitude.

or be
sentenced to transportation.

Terms of penal servitude instead of the present terms of transportation.

1501. No European or American shall be liable to be sentenced or ordered, by any court within the territories in the possession and under the government of the East India Company, to be transported. Act XXIV. 1855, sect. 1.

1502. Any person who, but for the passing of this Act, would, by any law now in force, or which may hereafter be in force, in any part of the said territories, be liable to be sentenced or ordered, by any such court, to be transported, shall, if a European or American, be liable to be sentenced or ordered to be kept in penal servitude for such term as is hereinafter mentioned. The terms of penal servitude to be awarded by any sentence or order, instead of the term of transportation to which any such offender would, but for the passing of this Act, be liable, shall be as follows: (that is to say:)—instead of transportation for seven years, or for a term not exceeding seven years, penal servitude for the term of four years:—instead of any term of transportation exceeding seven years, and not exceeding ten years, penal servitude for any term not less than four and not exceeding six years:—instead of any term of transportation exceeding ten years and not exceeding fifteen years, penal servitude for any term not less than six and not exceeding eight years:—instead of any term of transportation exceeding fifteen years, penal servitude for any term not less than six and not exceeding ten years:—instead of transportation for the term of life, penal servitude for the term of life. And in every case where, at the discretion of the court, one of any two or more of the terms of transportation hereinbefore mentioned might have been awarded, the court shall have the like discretion to award one of the two or more terms of penal servitude hereinbefore mentioned, in relation to such terms of transportation. Act XXIV. 1855, sect. 2.

Discretion of courts as to alternative punishments not to be affected.

1503. Provided always that nothing herein contained shall interfere with or affect the authority or discretion of any court in respect of any punishment which such court may now award or pass on any offender other than transportation; but where such other punishment may be awarded at the discretion of the court instead of transportation or in addition thereto, the same may be awarded instead of, or (as the case may be) in addition to, the punishment substituted for transportation by this Act. Act XXIV. 1855, sect. 3.

Effect of pardon granted upon condition of penal servitude.

1504. If any offender sentenced by any court within the said territories to the punishment of death shall have mercy extended to him, upon condition of his being kept in penal servitude for life, or for any term of years, all the provisions of this Act shall be applicable to such offender in the same manner as if he had been lawfully sentenced under this Act to the term of penal servitude specified in the condition. Act XXIV. 1855, sect. 4.

The executive government may direct Europeans or Americans under sentence of transportation to be kept in penal servitude.

1505. It shall be lawful for the governor general of India in council, or for the person or persons for the time being administering the executive government of any presidency or place in which a European or American has been lawfully sentenced by any court to be transported, to order such person to be kept in penal servitude for the shortest term of penal servitude substituted by this Act for a term of transportation of the same extent as that to which the offender was sentenced, or that portion thereof which he shall not have undergone,

provided that no person shall be kept in penal servitude under the provisions of this section after the expiration of the term of transportation to which he was sentenced. Act XXIV. 1855, sect. 5.

1506. Every person who, under this Act, shall be sentenced or ordered to be kept in penal servitude, may, during the term of the sentence or order, be confined in any such prison or place of confinement within any part of the said territories as the governor general of India in council shall, by any general order, from time to time, direct; and may, during such time, be kept to hard labour; and such person may, until he can conveniently be removed to such prison or place of confinement, be imprisoned, with or without hard labour, and dealt with in all other respects in the same manner as persons sentenced by the convicting court to imprisonment with hard labour may, for the time being, by law be dealt with. Provided that the time of such intermediate imprisonment, and the time of removal from one prison to another, shall be taken and reckoned in discharge or part discharge of the term of the sentence. Act XXIV. 1855, sect. 6.

Persons under

be
toIntermediate im-
prisonment.

Proviso.

1507. All Acts and Regulations now in force within any part of the said territories, with respect to convicts under order or sentence of transportation, or under order or sentence of imprisonment with hard labour, shall, so far as may be consistent with the express provisions of this Act, be construed to extend and be applicable to persons under any order or sentence of penal servitude made or passed under this Act. Act XXIV. 1855, sect. 7.

imprisonment
hard labour
applicable for
purposes of this
Act.

1508. The person or persons for the time being administering the executive government of the presidency or place, in which any European or American convict is imprisoned under a sentence or order of imprisonment for a term exceeding one year, whether with or without hard labour, may, with the consent of the governor general of India in council, order the removal of such prisoner from the prison or place in which he is confined to any other public prison or place of confinement within any part of the said territories; and such order shall be a sufficient authority for imprisoning the convict during the remainder of the term mentioned in the sentence, or any part of such term, in the jail to which the prisoner is removed. Act XXIV. 1855, sect. 8.

Removal
European or Ameri-
can convicts under
sentence of impri-
sonment from one
prison to another.

1509. It shall be lawful for the governor general of India in council to grant to any convict, who may hereafter be sentenced or ordered to be kept in penal servitude, a license to be at large within the said territories, or in such part thereof as in such license shall be expressed, during such portion of his term of servitude, and upon such conditions in all respects as to the governor general of India in council shall seem fit; and it shall be lawful for the said governor general in council at any time to revoke or alter such license by a like order. Act XXIV. 1855, sect. 9.

Governor general
in council may
grant a license to
be at large to any
convict under sen-
tence of penal servi-

1510. So long as such license shall continue in force and unrevoked, such convict shall not be liable to imprisonment or penal servitude by reason of his sentence, but shall be allowed to go and remain at large according to the terms of such license. Act XXIV. 1855, sect. 10.

imprisoned, &c

1511. In case of the revocation of any such license as aforesaid, it shall be lawful for one of the secretaries to the government of India by order in writing, to signify to any

I
ed, may be apprehend

ed and committed
to prison.

justice of the peace or magistrate that such license has been revoked, and to require such justice or magistrate to issue a warrant for the apprehension of the convict to whom such license was granted, and such justice or magistrate shall issue his warrant accordingly ; and such warrant may be executed by any officer to whom it may be directed or delivered for that purpose in any part of the said territories, and shall have the same force and effect in any place within such territories as if the same had been originally issued, or subsequently endorsed by a justice, or magistrate, or other lawful authority, having jurisdiction in the place where the same shall be executed ; and such convict, when apprehended under such warrant, shall be brought, as soon as he conveniently may be, before the justice or magistrate by whom the said warrant shall have been issued, or some other justice or magistrate of the same place, or before a magistrate or justice having jurisdiction in the zillah or district in which such convict shall be apprehended ; and such justice or magistrate shall thereupon make out his warrant under his hand and seal for the re-commitment of such convict to the prison or place of confinement from which he was released by virtue of the said license ; and such convict shall be re-committed accordingly, and shall thereupon be liable to be kept in penal servitude for such further period as, with the time during which he may have been imprisoned under the original sentence or order, and the time during which he may have been at large under an unrevoked license, shall be equal to the period mentioned in the original sentence or order. Act XXIV. 1855, sect. 11.

Penalty for
breach of condition
of license.

1512. If a license be granted under section 9 of this Act upon any condition specified therein, and the convict to whom the license is granted violate any such condition, or shall go beyond the limits specified in the license, or, knowing of the revocation of such license, shall neglect forthwith to surrender himself, or shall conceal himself or endeavour to avoid being apprehended, he shall be liable, upon conviction, to be sentenced to penal servitude for a term not exceeding the full term of penal servitude mentioned in the original sentence or order. Act XXIV. 1855, sect. 12.

son is a European
or an American.

1513. Any sentence or order upon any person describing him as a European or American shall be deemed, for the purposes of this Act, to be conclusive of the fact that such person is a European or American within the meaning of this Act. Act XXIV. 1855, sect. 14.

Construction of
Act.

1514. The word "European," as used in this Act, shall be understood to include any person usually designated a European British subject. Words in the singular number or the masculine gender shall be understood to include several persons as well as one person, and females as well as males, unless there be something in the context repugnant to such construction. Act XXIV. 1855, sect. 15.

SECTION XXXIV.

OF CONTEMPT OF COURT.

1515. All persons whatsoever, whether generally amenable to the courts of the East India Company, or otherwise, using menacing gestures or expressions, or otherwise obstructing justice in the presence of any magistrate, joint magistrate, or other officer under a magistrate empowered to try criminal cases, or any superior or inferior court, civil or criminal, of the East India Company, are liable to be fined by the authority whose proceedings are obstructed to any amount not exceeding 200 rupees, or in case such fine is not paid to be imprisoned for any period not exceeding one month. Provided that from the award of punishment in such cases an appeal may lie, if preferred within one month, to the authority civil or criminal, appointed by law to hear appeals in all other cases from the decisions of the officer by whom the fine was imposed. And provided also that notwithstanding anything in this Act it is lawful to indict any person amenable to Her Majesty's supreme courts as for a misdemeanor in any of the cases aforesaid sustainable before this Act, if no proceeding has been had against the offender in the court where the offence was committed, but not otherwise. Act XXX. 1841, sect. 1.

Persons are pun-

ing justice in open court.

Appeal from award of punishment in

Persons amenable to supreme court may be punished under this Act, or indicted.

1516. The revenue authorities may also in such cases impose a fine of 200 rupees, or one month's imprisonment in the civil jail in lieu thereof. Such orders, as well as sentences passed under the above section, are to be carried into effect by the magistrate, on application being made to that officer, in the usual mode. Act XXX. 1841, sect. 2.

The magistrate is to carry into effect the awards of revenue authorities.

1517. Evasion of a magistrate's process is not punishable as a contempt under the above provisions, which are applicable solely to contempts committed in open court.(a) Const. No. 619.

Evasion of process is not punishable as a contempt.

1518. Under the above provisions, which repeal so much of Reg. XII. 1825, as relates to contempt of court, a person is no longer punishable as for that offence (as is ruled in Const. No. 1098) who, in a petition to a session judge in appeal from the orders of a magistrate, falsely and maliciously asperses the character of that officer. See Index to the constructions heading "contempt," No. 3, page 25.

Nor falsely aspersing the character of a public officer in a petition.

1519. The above Act is the only law under which contempt of court can now be punished, and as wilful and designed prevarication in a witness does not appear to be correctly classable under the "obstructions to justice," rendered punishable by the above enactment, that offence cannot be punished as a contempt of court; and Const. No. 1177 is rescinded. C. O. No. 128 of vol. 3.

Nor prevarication in a witness.

(a) The above is a construction of Reg. XII. 1825, but is equally applicable to Act XXX. 1841. For rules of evasion of process, see the section on that subject in the next chapter.

Contempts out of court are not punishable.

1520. Where a person went to the house of a deputy magistrate to prefer a complaint, instead of going to the cutcherry, and the deputy magistrate fined him as for a contempt, the order was reversed as manifestly illegal and unjustifiable. Reports *L. P.* 1855, part 2, page 191.

SECTION XXXV.

OF COMPROMISE, AND IBRA.

Compromise.

No private compromise is to be received by a magistrate in heinous crimes.

1521. Excepting in cases of a trivial nature, such as abusive language, slight trespasses, and inconsiderable assaults or affrays, no razeenamah is to be received without the special sanction of the magistrate; nor is any private compromise to be admitted by the magistrate in crimes of a heinous nature, such as on conviction require exemplary punishment for the ends of public justice. Reg. IX. 1807, sect. 8.

Or by any other court.

Nor can a session judge admit a formal compromise of any case after commitment.

1522. The principle of the prohibition, contained in the above clause, is applicable to, and obligatory upon, the whole of the criminal courts. A session judge, therefore, would not be justified in admitting a compromise in crimes of such serious nature; especially crimes recognised as such in the regulations, and when it has been expressly directed that the offenders should be brought to trial before the criminal courts. Nor can he in any case admit a formal razeenamah to bar the trial of a commitment made by a magistrate; both as there is no provision for such in the existing regulations, and as the established practice of discharging the prisoner on acquittal, when evidence is not adduced for his conviction, and the ends of public justice do not require a postponement of the trial for further evidence, appears preferable to the admission of a compromise, which might perhaps leave the prisoner exposed to a future prosecution. C. O. No. 187 of vol. 1.

The Mahomedan law allows the ruling power to reject.

1523. The Mahomedan law recognises the right of the ruling power to punish serious offences for the ends of justice, although the injured individual waives his private claim. N. A. R. vol. 1, page 367.

Police officers cannot admit.

1524. The darogahs and other police officers are prohibited from admitting compromises or razeenamahs in any cases. Reg. XX. 1817, sect. 12, cl. 3.

If case remanded, magistrate cannot admit compromise.

1525. A magistrate has no authority to accept a compromise in a case which has been remanded to him only for the taking of fresh evidence to be reported to the session judge. Letter of Nizamut Adawlut to Judge of Rajshahye, No. 1021, July 29, 1852.

In a case of theft, magistrate need not regard.

1526. Notwithstanding a private compromise of theft, the magistrate may, if he think proper, direct a public prosecution. Const. No. 318. And in a petty case can refuse to dispose of a case on the filing of a razeenamah, if he is not satisfied that it is given voluntarily. Reports *L. P.* 1855, part 2, page 189.

Civil courts cannot enforce the terms of a compromise between a thief and the person robbed.

1527. A compromise between a thief and the owner of the property, the consideration being on the one side forbearing to prosecute, and on the other restitution of the stolen property, is a contract to which the civil court cannot give effect. Const. No. 318.

1528. In a case of rape the court sentenced the prisoner to punishment, although a razeenamah was filed by the injured party in consequence of the prisoner's promise to marry her, as in so heinous an offence a compromise was deemed inadmissible. N. A. R. vol. 3, page 127. It is inadmissible in a case of rape;

1529. A private compromise was held to be inadmissible in a case of forcible abduction of a young girl involving a serious breach of the peace. Reports *L. P.* 1852, part 1, page 716. and in a case of abduction.

1530. In all cases of murder, mutilation, or severe personal injury, in which the heir of the slain, or the person injured, refuses to prosecute, the law officers of the nizamat adawlut are to be called on to declare what the futwa would have been, in the event of their having prosecuted; and the judge or judges sitting on such trial are to pass sentence under the general regulations, and on a consideration of all the circumstances of the case, the same as if the parties had come forward to prosecute. Reg. IV. 1822, sect. 3. Ibra.

1531. The nizamat adawlut pay no regard to the circumstance of a prosecutor waiving his demand of *kisas* against the prisoner. N. A. R. vol. 1, page 86. The nizamat would not admit ibra of

1532. The prosecutor, in a trial for murder, having expressed in the sessions court his unwillingness to proceed with the charge against the prisoner, it was held that such declaration did not vitiate the trial. The court however were of opinion that, on such declaration being made, the session judge should have directed the magistrate to issue the necessary instructions to the government pleader to carry on the prosecution. N. A. R. vol. 5, page 172. The prosecution vitiates the trial; but the government pleader should be ordered to prosecute.

1533. In the case of a prisoner cutting off his wife's hand, the law officers of the nizamat adawlut convicted him of the offence charged, but declared him unconditionally released from every penalty, in consequence of the injured party withdrawing her claim. Under the peculiar circumstances of the case, the prisoner was admonished and released without punishment.(a) N. A. R. vol. 1, page 344. By the Mahomedan law ibra solves from ment.

SECTION XXXVI.

OF COSTS AND DAMAGES.

1534. No pecuniary compensations nor sums as damages are to be adjudged to, or be recoverable by, individuals in any criminal prosecution. *Beng. and Ben. Reg.* XIV. 1797, sect. 3, cl. 1. *Ced. Prov. Reg.* VII. 1803, sect. 39, cl. 1. Damages cannot be adjudged!

1553. But the criminal courts are not restricted from adjudging a reimbursement of costs actually incurred, upon a prosecution before them, by either of the parties thereto, in but costs actually incurred may be awarded;

(a) A similar case is reported, in which a wife mutilated her husband, and the latter refused to appear against her; and, when the government pleader conducted the prosecution, presented a razeenamah. On this case the court came to the conclusion that it was not within their competence to sentence the prisoner to punishment; and section 8, Reg. IV. 1822, was subsequently enacted in order to provide such power. See N. A. R. vol. 2, page 29.

particular instances, wherein they consider such reimbursement just and equitable. *Beng. and Ben. Reg. XIV. 1797, sect. 8. Ced. Prov. Reg. VII. 1803, sect. 39, cl. 3.*

all cases.

1536. The above provisions apply to suits under Act IV. 1840, as well as to other cases.(a) Const No. 505.

Suits for damages must be provided in the civil court.

But civil courts cannot award the costs of a criminal action. The magistrate may award such by a subsequent order.

1537. The criminal courts cannot award any compensation or damages beyond reimbursement of actual costs. The parties must be referred to a civil action. Const. No. 931.

1538. The civil courts are not competent to take cognizance of suits for costs incurred in a criminal court. But if a magistrate, from oversight, has omitted to order a reimbursement of costs to the party whom he thinks justly entitled thereto, he is at liberty to supply the omission by a subsequent order, upon application of the party for that purpose. Const.

Costs may not be paid from the government treasury; but must be recovered as in a civil suit.

1539. In no case, wherein the government is not one of the parties, can reimbursement of the costs be made from the treasury of the court; they must be levied by the attachment and sale of the property of the party against whom they are awarded, in like manner as costs adjudged in civil suits. Const. Nos. 373 and 590.

Fine not exceeding in amount the property wrongfully appropriated may be imposed; the

1540. All criminal courts within the territories under the government of the East India Company may add to the punishment competent to them to inflict upon persons convicted before them of robbery, theft, embezzlement, knowingly receiving stolen goods, cheating, or other wrongful appropriation of property, or of being accessory or privy to any such offence, the punishment of fine, not exceeding the loss appearing to be caused to the several persons who have suffered by such wrong; and may pay and distribute the proceeds of such fine, or any part thereof, to or for the benefit of the said several persons, according to the discretion of the court. Act XVI. 1850, sect. 1. See section "of restitution of stolen property" in book 6.

SECTION XXXVII.

OF THE LIABILITY OF JUDICIAL OFFICERS TO THE CIVIL COURTS.

How far liable to action in supreme court for official acts.

1541. In order to render the provincial magistrates, as well natives as British subjects, more safe in the execution of their office, it is enacted, that no action for wrong or injury shall lie in the supreme court against any person whatsoever exercising a judicial office in the country courts for any judgment, decree, or order of the said court, nor against any person for any act done by or in virtue of the order of the said court. 21 George III. cap. 70, sect. 24.

Not liable for things done within jurisdiction though erroneously or irregularly done:

1542. Three meanings may be attributed to this clause. *First.* It may mean that no action shall lie against one exercising a judicial office in the country courts for any judgment, decree, or order of the court, whether in a matter in which the court had a jurisdiction or not,

(a) This was ruled in regard to Reg. XV. 1824, ; but appears equally applicable to Act IV. 1840.

or whether the judge wilfully and knowingly gave judgment or made an order in a matter out of his jurisdiction or not; so that *the fact* of the existence of a judgment, decree, or order should preclude all inquiry. *Secondly*. It may mean to protect the judge only where he gives judgment or makes an order in the *bond fide* exercise of his office, and under the belief of his having jurisdiction, though he have it not. *Thirdly*. The object may have been to put the judges of the native courts on the footing of judges of the superior courts of record, or English courts having similar jurisdiction to the native courts, protecting them for things done within their jurisdiction though erroneously or irregularly done, but leaving them liable for things done wholly without jurisdiction. It seems to us that the first of these constructions is inadmissible. It never could have been intended to give such unlimited power to the judges of the native courts, and reason points out that the general words must be qualified in the manner stated in one of the two latter modes of construction. We think the third is the right mode; and that the true meaning of the section in question was to put the judges of native courts of justice on the same footing as those of English courts of similar jurisdiction. There seems no reason why they should be more or less protected than English judges of general or limited jurisdiction, under the like circumstances. To give them an exemption from liability when acting *bond fide* in cases in which they had, though mistakenly, acted without jurisdiction, would be to place them on a better footing than English judges or magistrates, and to leave the injured individual wholly without civil remedy; for English judges, when they act wholly without jurisdiction, whether they may suppose they had it or not, have no privilege. *Calder versus Halkett*, 2 Moore's East Indian appeal cases, page 306.

but liable under the above statute for things done wholly without jurisdiction.

It will be by referring to Act XVIII. 1850 in para : 1546, that the legislature has thought fit to grant such extended protection to judicial officers in India.

1543. It is not merely in respect of acts in court, acts *sedente curia*, that an English judge has an immunity, but in respect of all acts of a judicial nature, as was decided in the case of *Taaffe v. Lord Downes*; and an order under the seal of the foudaree court to bring a native into that court to be there dealt with on a criminal charge is an act of a judicial nature, and whether there was any irregularity or error in it or not, would not be punishable by ordinary process at law. But the protection would clearly not extend to a judicial act done wholly without jurisdiction. *Calder versus Halkett*, *Ibid*.

Protection confined to

1544. A judge is not liable in trespass for want of jurisdiction, unless he knew of the defect, or had such information as to make it incumbent on him to ascertain the fact; and it lies on the plaintiff in every such case to prove the possession of such knowledge or information on the part of the judge. *Calder versus Halkett*, *Ibid*.

Not liable for want of jurisdiction unless he knew, or had means of knowing, of defect.

1545. In regard to the liability of individuals to the jurisdiction of the courts, it has been ruled, with reference to the doctrine laid down by Sir L. Peel, C. J. in Foy's case, that the criminal courts should not proceed to try and sentence a person, whom they may themselves have fair reason from any cause to regard as probably not subject to their jurisdiction, without making all practicable inquiry to satisfy themselves on the point.^(a) This ruling rescinded that laid down in the case of *Government versus Mandeville* (N. A. R. vol. 2, page 111; and Const. No. 759) that the *onus probandi* of non-liability rested with the defendant; and that in default of such proof the courts might safely proceed against him. C. O. No. 33 of vol. 4.

When the courts are bound to enquire as to their jurisdiction.

(a) The judgment of Sir L. Peel will be found at length in the chapter "of European British subjects" in book 8.

Judicial officer not liable even for want of jurisdiction if he in good faith believed himself to have jurisdiction.

1546. No judge, magistrate, justice of the peace, collector, or other person acting judicially, is liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction : provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of : and no officer of any court, or other person bound to execute the lawful warrants or orders of any such judge, magistrate, justice of the peace, collector, or other person acting judicially, is liable to be sued in any civil court for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same. Act XVIII. 1850.

A "belief in good

1547. The construction of the above Act, for the first time since its promulgation, was submitted to the opinion of the judges of the supreme court (August 1851) in the case of *Lang versus Gubbins*, which was an action brought against a mofussil magistrate for issuing an illegal warrant to seize the plaintiff's goods and chattels. In that case Sir L. Peel, C. J. in delivering the judgment of the court (after argument of the question), held that the " words 'in good faith' were merely an English version of the common Latin phrase 'bonâ fide,' of such frequent use in the law, both phrases having the same meaning : and that the true construction of 'good faith' appeared to be that belief, which, though erroneous, was excusable in the particular instance, or in other words that which stood on some reasonable grounds." Taylor and Bell's Reports, vol. 1, page 228 note.

Protection extended against actions for libel.

Reports to nizamut adawlut are judicial proceedings.

1548. A judge is privileged in respect of any words, relevant to the issue, uttered by him, while acting judicially, in a case within his jurisdiction, although such words convey an imputation upon a person not judicially before him ; and the English letters reporting on trials, which a sessions judge is directed to forward to the nizamut adawlut, are judicial proceedings and entitled to the same privilege as a judgment delivered in open court. In order to maintain an action of slander against a judge for words uttered in the course of his duty, on the ground that they were irrelevant to the matter in hand, it must be shown that the irrelevancy was so gross as to afford no room for the hypothesis of honest mistake. *Moulavie Ali Kureem versus Sandys*, Boulnois's Reports, page 1.

No rule or other process to be made on information against any officer, until

1549. In case of an information intended to be brought or moved for against any such officer or magistrate for any corrupt act or acts, no rule or other process shall be made or issued thereon, until notice be given to the said magistrate or officer, or left at his usual place of abode, in writing, signed by the party or his attorney, one month if the person exercising such office shall reside within fifty miles of Calcutta, two months if he shall reside beyond fifty miles, and three months if he shall reside beyond one hundred miles from Calcutta, before the suing out or serving the same, in which notice the cause of complaint shall be fully and explicitly contained ; nor shall any verdict be given against such magistrate, until it be proved on trial that such notice hath been given ; and in default of such proof a verdict with costs shall be given for the defendant. 21 George III, cap. 70, sect. 25.

No magistrate liable in such case to arrest, until he has declined to ap-

1550. No magistrate shall be liable in any such case to any personal caption or arrest, nor shall be obliged to put in bail, until he shall have declined to appear to answer after notice given as directed by this Act, and service of the process directing his appearance by himself or his attorney. 21 Geo. III, cap. 70, sect. 26.

1551. Magistrates and other officers who were not liable to prosecution in the Company's courts for damages, for acts done in their official capacity, prior to the enactment of Act XI. 1836,^(a) have not been rendered liable by that Act. Const. No. 1051.

Not liable to civil courts.

1552. No action will lie in the civil courts either against the magistrate, or against the government for acts done by the magistrate in his judicial capacity ; and those courts are prohibited from taking cognizance of suits instituted to reverse the order of a magistrate, or other criminal court, even though such order were passed without jurisdiction. Reports S. D. A. L. P. 1855, pages 265 and 461. This doctrine appears questionable, and would not probably be again upheld upon argument. The judicial character of an officer cannot protect an act done without jurisdiction, for the judicial character exists only within the limits of the jurisdiction. Moreover, sect. 3, Reg. IX. 1831 expressly recognizes the power of the civil courts to revise the orders of the criminal authorities in cases of a miscellaneous nature which are not criminal trials.

Action will not lie in civil courts against the magistrate ; or against government for acts of magistrate ; or to reverse order of magistrate.

1553. On the institution of any action against an officer of government for acts done in the discharge of his public duty, he is to communicate the fact through the usual official channel, reporting all circumstances which may be necessary to enable the government to arrive at a decision on the real merits of the case. If, on full examination into the case, and on a fair and reasonable interpretation of his proceedings, the officer appears to have acted rightly, he will be directed to take the necessary steps to defend himself, government advancing the funds necessary for that purpose, to be refunded after the issue of the action is known in case the circumstances then brought to light should prove the officer to have acted improperly. If, on the other hand, upon examination of his case by the government, his conduct appears to have been clearly wrong, he will be informed that the government will not interfere, and that he must defend himself at his own charge. C. O. S. D. A. No. 11, May 12, 1848. L. P. C. O. Sup. Pol. L. P. No. 5 of 1848.

How far government will advance the expenses of actions brought against officers for acts done in the discharge of public duties.

CHAPTER

O F P R O C E S S E S.

SECTION 1.

RULES OF GENERAL APPLICATION.

1554. Forms of every requisite process are prescribed by C. O. No. 3, January 19, 1855. Indents for such forms are to be made on the lithographic press.

Forms.

1555. Civil and criminal processes may be forwarded by post on the public service. C. O. November 30, 1855. L. P.

May be sent by dak.

1556. Whenever a summons, or other criminal process, is served by a burkundaz, chaprasi, or other public officer receiving wages from government (and such officers are

In heinous cases all processes are to be served by offi-

(a) This Act made Europeans liable to the mofussil civil courts.

cers receiving pay from government.

Penalty, if such officers demand or receive diet money.

to be employed in serving all criminal processes in cases of a heinous nature) no diet money, or other allowance or gratuity, is to be demanded or received from the complainant or the accused, whether the case be adjusted by razeenamah or otherwise; and the demand or receipt of such by any public officer, directly or indirectly, in violation of this rule, is punishable as a criminal offence on conviction before the magistrate, or sessions court. The offender is also compellable, either by a criminal prosecution, or a civil action, to refund the amount received, besides being liable to immediate dismissal from office. Reg. IX. 1807, sect. 14, cl. 2. Reg. VII. 1811, sect. 4.

In petty cases processes are to be served by peons, who are to receive only a fixed rate of

1557. In cases of adultery, fornication, calumny, abusive language, slight trespass, or inconsiderable assault, the process is to be served by peons, or other persons not receiving wages from government, who are to be authorized by the magistrate to demand and receive tulubana at a fixed rate; and they are not to demand or receive more, upon any pretence whatever, under the penalties above stated with respect to public officers receiving wages from government. The tulubana is to be paid in the first instance by the party at whose instance the process is issued, subject to reimbursement from the accused, if the charge is established, under the discretion vested in the criminal courts by sect. 8, Reg. XIV. 1797 (*Ced. Prov.* cl. 3, sect. 39, Reg. VII. 1803).^{*} Reg. IX. 1807, sect. 14, cl. 3. Reg. VII. 1811, sect. 4.

^{*} v. para : 1585.

Peons so employed are to be registered.

1558. Magistrates are to cause the names of all persons employed in the execution of criminal processes, who do not receive a monthly salary from government, to be registered with the following particulars, *viz.*, the names of their fathers, their age, and places of abode, and a concise description of their persons. Reg. XXVI. 1814, sect. 14, cl. 2.

are to employ no persons not registered.

1559. The nazirs are strictly prohibited, under pain of immediate dismissal, from employing any person not registered in the mode above prescribed, and not being an officer on the public establishment, in the service of any process, or in the execution of any order or official act whatever, without a special authority from the magistrate, or other public officer competent to give such directions. Reg. XXVI. 1814, sect. 14, cl. 3.

Badge of office.

1560. It was directed that the peons, who might be registered as above required, should be furnished with an uniform belt, or such other badge of office, at the discretion of the judge, as should suffice to distinguish them for the chaprasis on the fixed establishments. The expense of such badge was to be defrayed out of the tulubana of the peon receiving the same. The judges and magistrates were required to frame a table for regulating the account of tulubana demandable on the service of process, according to the rates prescribed by the regulations, or established by usage.^(a) The table was to contain a statement of the several police jurisdictions, or other more convenient local divisions, the computed distance of the central part of such local division from the sudder station, and the number of days for which tulubana is to be allowed on the serving of

Table of tulubana according to the distance of each thana.

(a) In clause 8, sect. 14, Reg. IX. 1807 (which is modified by sect. 14, Reg. XXVI. 1814) the rate specified is "two annas per diem, or three annas in districts where such higher rate is usual and necessary." The Lieut. Governor of Bengal has directed that an uniform rate of 2 annas per diem should be adopted in all the civil courts of the lower provinces. C. O. S. D. A. No. 62, April 9, 1855. L. P.

process within each local division, calculated on the computed distance of the centre of each local division from the sudder station. Reg. XXVI. 1814, sect. 14, cl. 4.

1561. The table so framed is to be suspended for general information in the cutcherry of the magistrate; and no tulubana is to be allowed in any instance beyond the rates, or for a greater number of days, than is prescribed in such table, without a special written order from the magistrate, assistant, or other public officer competent to pass the same. Reg. XXVI. 1814, sect. 14, cl. 5.

Such table to be suspended in cutcherry, and tulubana to be paid previously to the execution of process.

1562. The amount of tulubana, demandable according to such table, is to be specified on the back of each summons or other process, and the amount is to be paid by the person taking out the process to the nazir previously to the execution of such process: a receipt is to be endorsed on the process in each instance by the nazir, specifying the amount, and the person from whom it was received. Reg. XXVI. 1814, sect. 14, cl. 6.

Tulubana to be paid previously to the execution of process.

1563. When two or more processes are to be served by one peon, the magistrate, or other officer who orders the same to be served, is to determine in what proportions the fixed rates of tulubana are to be paid by the parties respectively, and is to sign an order to that effect on the face or back of the process. Reg. XXVI. 1814, sect. 14, cl. 7.

If two or more processes are to be served by one peon.

1564. When the process has been executed and returned according to the preceding rules, the nazir is to pay to the peon three-fourths of the tulubana received by him on account of such process, and the nazir is entitled to appropriate the remaining one-fourth of the tulubana to his own use. Reg. XXVI. 1814, sect. 14, cl. 8.

The peon is to be paid $\frac{3}{4}$ of the tulubana after execution of process.

1565. The nazir is permitted to exercise his discretion in advancing to the peon, on his own responsibility, such portion of the tulubana as he considers necessary for the subsistence of the latter while engaged in serving the process on account of which it is paid; but the presiding officer is not competent to exercise any interference in the matter. Const. No. 1084.

But nazir may make advances to the peon at his discretion.

1566. The magistrates and other officers are required to take every possible precaution, and to give all practicable attention for the purpose of preventing illegal or undue exactions of diet or subsistence money under the name or pretence of tulubana. Reg. XXVI. 1814, sect. 14, cl. 9.

Magistrate to prevent undue exactions.

1567. The issue of a general warrant [or other process against the person] is illegal. Const. No. 766.

General warrant illegal.

1568. Zumeendars, like any other individuals, are competent to apprehend persons in the actual commission of public crimes. C. O. No. 80 of vol. 1.

Any one may arrest offender in the act.

1569. The sudder court expressed their reprehension of permitting candidates for employment to apprehend, without warrant or authority, parties who have evaded apprehension by the police, in the hope that by so doing they may obtain employment. Reports L. P. 1851, page 1657.

Candidates for employment.

1570. Whenever any process is issued by a magistrate or police officer for the attendance of a prosecutor or witness, or for the apprehension of a defendant, and such person is absent or has absconded, the police officer entrusted with the process is to require the proprietor, manager, or head person of the village, in which the person summoned is said to

In case of absence, or absconding, an engagement is to be taken from head person of village to produce.

on his
to give
information.

reside, to furnish a written certificate of the individual's absence, engaging therein either to cause his attendance on his return to the village or to give information at the thana of his arrival. Reg. XX. 1817, sect. 24, cl. 5.

Penalty for failure in such engagement.

1571. If it is afterwards established, on inquiry before the magistrate, that the person summoned was actually in the village at the time of the execution of such certificate; or if it is proved that he returned to the village afterwards, and that the person executing the certificate wilfully neglected to give due intimation of his return to the officers of police; the person so offending is liable to be fined by the magistrate in any sum not exceeding 200 rupees, and in default of payment to be confined in the civil jail for any period not exceeding one month. Reg. XX. 1817, sect. 24, cl. 6.

Magistrates may attend in person the execution of their own process.

1572. Whenever a magistrate, or other public officer, authorized by the regulations in force to issue process of arrest, or other judicial process upon the person or property of individuals amenable to their respective jurisdictions, deems it necessary for any special reason to be personally present at the execution of such process; and to see that it is duly executed in the manner prescribed by the regulations; it is competent to the public officer, who has issued the process, to attend personally for the purpose above-mentioned; and to adopt or direct any legal measures that may be necessary for the execution thereof. Reg. I. 1825, sect. 2.

Power of releasing from arrest.

1573. The court which issued the process of arrest is alone competent to release the prisoner. Const. No. 1000.

A person in attendance on one court is not liable to be arrested by another.

1574. A person being in attendance on a criminal court on bail to answer a criminal charge is not liable to arrest under a civil process; nor is a person in attendance on a collector to defend a suit or claim pending before that officer. But the protection will last only as long as the party is in actual attendance, or coming to, or returning from the court.(a) Const. Nos. 885, 893, and 1089.

Nor can a civil court require a magistrate to deliver up a person on the expiration of his sentence of imprisonment.

1575. The civil court is not competent to require from a magistrate delivery on civil process of the person of a prisoner after the expiration of his imprisonment in the criminal jail. Const. No. 1276.

Nor can a police officer be arrested while in the execution of his duty.

1576. Police officers of one zillah may not be arrested in another, while in the execution of their duty. Const. No. 851.

(a) On a reference being made to the Advocate General regarding this point, he replied, that according to English law no man attending a court of justice as party or witness in any cause of any sort could be arrested on process in a civil suit, the protection being *eundo*, *morando*, and *redeundo*, and a reasonable construction being given as to what is going, staying, and returning. It would seem therefore that a plaintiff is equally with the defendant exempt from an arrest under such circumstances; and it is doubtless as reasonable in the one case as the other.

SECTION II.

OF SUMMONS.

1577. The summons issued by a magistrate* in the case of any bailable crime or misdemeanor, which does not appear to require the immediate apprehension of the accused, is to bear his official seal and signature and to be served through the foudaree nazir by a single chaprasi or peon;—or† if the accused have an accredited agent at the place where the court is held, expressly empowered either by a clause in his general mokhtarnamah, or by a separate mokhtarnamah granted for that purpose, to receive on behalf of his constituent judicial processes, the summons may be tendered, if the magistrate deem it expedient, to such agent to be communicated by him to his principal; and the agent's acknowledgment endorsed thereon is to be accepted as a sufficient service of it, if he be desirous of giving such acknowledgment in preference to the summons being served on the person of his principal by an officer of the court;—or if the accused is employed in the salt department, according to the special rules provided for such case. Reg. IX. 1807, sect. 6, cl. 1.

**By magis-
trate.**

How to be
ed in bailable

† In the manner
prescribed for ser-
vice of civil process
by cl. 2, sect. 2,
Reg. II. 1806.

1578. The summons in all such instances is to specify the offence with which the accused is charged, and is to contain, according to the circumstances of the case, a requisition to attend either in person or by vakeel to answer the charge on or before a certain day to be stated in the summons according to the form No. 1 of Appendix A. Reg. IX. 1807, sect. 6, cl. 2.

What it is to
contain; and
form.

1579. If it is deemed necessary to require bail, the extent of the bail is to be specified in the summons according to form No. 2 of Appendix A. Reg. IX. 1807, sect. 6, cl. 3.

Form to be used
when bail is requir-
ed.

1580. The warrant issued by the magistrate, when an accused person, on whom a summons has been served, has not attended according to the exigence thereof,* is to bear his official seal and signature [and to be drawn out according to form No. 5 of Appendix A]. Reg. IX. 1807, sect. 7.

Warrant when
the summons is
neglected.
* v. ¶ 847.

1581. In the Company's territories, except the local jurisdiction of the supreme court, whenever in any criminal case a summons to the defendant is by law the first process, it is lawful for any court which has issued a summons in such case to issue a warrant for the apprehension of the defendant in such case, upon proof that due diligence has been used to serve such summons upon the defendant, and that the officer or other person whose duty it is to serve such summons upon the defendant has been unable to serve such summons; any law or regulation to the contrary notwithstanding.† Act X. 1845.

Warrant may be

pendix A, No. 4.

1582. In cases, in which bail is not required, the officer entrusted with the summons is to demand only an acknowledgment of the receipt of it; and in the absence of the party the summons may be served on the principal person in his house or family, if such person be willing to receive the same, and to return an acknowledgment for the party. The officer serving the summons, in such instances, as well as in all cases wherein the magistrate may deem it proper to admit the private adjustment of the parties, is to be further instructed

How the officer
serving the sum-
m
in
ba
ed.

He may receive

on the tender of a razeenamah, expressing the plaintiff's desire to withdraw his complaint, and the defendant's acquiescence in the complaint being withdrawn, to receive such razeenamah as a sufficient return to the process. Reg. IX. 1807, sect. 8.

By police officer.

To be served by a single burkundaz, and not by the party complaining.

* v. ¶ 862.

1583. The summons issued by a police officer in the case of aailable offence, not requiring the immediate apprehension of the accused,* is to bear his official seal and signature, and to be served through a single burkundaz, or through any known and accredited agent of the party complained against, who may be upon the spot, and willing to receive the same in behalf of his principal; but no summons is to be delivered to a complainant to serve on the person accused. Reg. XX. 1817, sect. 24, cl. 1.

When bail is not
, acknow-
of re-
is

1584. In cases wherein bail is not required, police officers entrusted with the service of summonses are to demand only an acknowledgment of the receipt of the process; and, in the absence of the party, the summons may be served on the principal person in his house or family, if such person be willing to receive the same, and to return an acknowledgment for the party whose attendance is required. Reg. XX. 1817, sect. 24, cl. 2.

Forms of sum-
n bail is
when it is
required.

1585. The summons to be issued by police officers, under the rules contained in the preceding clauses, is to be made out in the form No. 32 of Appendix A; but if the charge is of a serious nature, and such as appears to require bail to secure the appearance of the party accused, either in person or by vakeel, before the magistrate, the summons is to be drawn up according to the form No. 33 of Appendix A, and is to specify the bail to be given. Reg. XX. 1817, sect. 24, cl. 3.

Form of warrant
in cases of persons
neglecting sum-
mons.

864.

1586. The warrant issued by a police officer for the apprehension of an accused person, who does not obey the requisitions of the summons,* is to be under his official seal and signature, and to be drawn out according to the form No. 34 of Appendix A. Reg. XX. 1817, sect. 24, cl. 4.

SECTION III.

OF WARRANTS.

**By magis-
trate.**

In a case not
bailable.

* v. ¶ 884.

1587. The warrant to be issued by a magistrate, in the case of an offence notailable or in which the admission of bail would be unsafe and improper,* is to bear his official seal and signature, and to specify the crime charged, and to direct the officer entrusted with the execution of it to apprehend the person accused. It is to be in the form No. 6 of Appendix A, and to be directed to the nazir of the criminal court. Reg. IX. 1807, sect. 3, cls. 1 and 2.

In aailable case.

1588. If the magistrate in anyailable case deems it proper to authorize the officer, to whom the warrant is committed, to receive bail for appearance (with or without security for keeping the peace), it is to be so specified in the warrant, with the extent of the bail (and security) required, in the form No. 2 of Appendix A. Reg. IX. 1807, sect 3, cl. 3.

attendance of the party, certifying on the back of the process the manner in which it has been served, and by whom the security has been given, or causing the defendant to accompany the officer bearing the darogah's process to the thana. Reg. XX. 1817, sect. 29, cl. 1.

1602. In cases of a bailable nature, in which a person under engagements, and employed in the salt or opium departments, is summoned under the above provisions during the manufacturing season, the police darogah, with the view of preventing unnecessary interruption to the manufacturer, is to require the party summoned to appear in person or by vakeel, either during or after the manufacturing season, as the circumstances of the case may dictate, subject to the future orders of the magistrate, to whom the darogah is in each instance to report the reasons which have influenced him in the exercise of the discretion here vested in him. Reg. XX. 1817, sect. 29, cl. 2.

In such cases the accused is not to be forced to appear till after the manufacturing season, except in particular cases.

1603. Summonses to any officers or persons, employed in the salt or opium departments, to attend as witnesses are to be served in the manner directed by the above provisions; but the salt or opium agent, or the head native officer of the aurung, kothee, or chokee, instead of requiring the person summoned to give security, or proceed to the thana, is to take from the witness a recognizance, agreeable to the form No. 39 of appendix A, and is to deliver the same to the officer serving the process. Reg. XX. 1817, sect. 29, cl. 3.

Rule for serving summonses on such persons to attend as witnesses, and for taking recognizance.

1604. If a charge is preferred to a police darogah against any officer or person, employed in the salt or opium departments, for an offence that is not bailable, and there appears to him sufficient ground under the provisions of this regulation, for apprehending the person so charged, the warrant for his apprehension is to require him to attend immediately in person, and is to be executed in the same manner as upon persons not so employed. But the darogah, after securing the offender, is to give notice of his apprehension to the salt or opium agent, or to the head officer of the nearest aurung, kothee, or chokee, as the case may be. Reg. XX. 1817, sect. 29, cl. 4.

Warrants for offences not bailable are to be served upon such as upon

1605. When any process or order is issued by a magistrate to a salt agent, or his assistant, he is to forward it under a sealed cover addressed to the agent, or his assistant, and superscribed with his official attestation. The agent, or his assistant, is immediately to acknowledge the receipt of the order, or process, by an endorsement to that effect on the back of it, and is to return it under a sealed cover addressed to the magistrate. Reg. X. 1819, sect. 15.

Magistrate. Process how to be issued to a salt agent or his assistant.

1606. In cases in which a person under engagements on account of the salt manufacture, and employed therein, is charged before the magistrate with a bailable offence, and the warrant is ordered to be served at any period between the commencement of the month of Kartik and the end of Asarh;—the warrant is to be enclosed in a sealed cover addressed to the agent, and superscribed with the official signature of the magistrate; and is to require the party summoned to appear in person, or by vakeel, as the magistrate thinks proper, either during or after the manufacturing season; and to specify the sum for which the security or recognizance for the appearance of the defend-

Rules for serv-

ed with a

to what to contain.

The agent may himself or by another person execute the security required ;

his guarantee of the security being sufficient ;

or he may cause the accused to be conveyed to the court.

He is to appoint persons at the sudder station to execute securities ; and the magistrate may send the process to such persons.

If the process is served in the ordinary form on persons employed in the salt manufacture, from ignorance on the part of the court of his being so employed,—the officer how to proceed.

Agent to endorse the process.

Manner of arresting such persons on criminal charges not bailable.

ant is to be given, the amount of which is to be regulated by the magistrate, according to the nature of the offence, and the situation and circumstances in life of the defendant. It is at the option of the agent to execute, or to cause one of his officers, or any other person whom he thinks proper, to execute the security required from the accused, in cases in which such security is considered necessary, or to leave the party summoned to find the required security ; and in the latter case if the officer bearing the summons or warrant entertains doubts of the responsibility of the surety so offered, and the agent declares such surety to be responsible, the officer is to accept the security. If the agent does not deem it expedient to order any of his officers or any other person to become security, and the defendant himself is not able to find such security as the agent deems responsible, the agent is to cause the party summoned to accompany the officer to the court, or, if the summons has not been committed to the charge of an officer, he is to cause him to be conveyed before the court. The agents are to appoint such persons as they think proper to station at the place, at which the court is held, to execute such security ; and the magistrate is authorized in instances in which he deems it proper, either from the distance of the place of abode of the agent from the place at which the person to be summoned resides, or other circumstances, to order the summons or warrant to be enclosed to one of the persons so empowered to become security, instead of transmitting it to the agent himself,—in which case such person is to proceed in the manner prescribed to the agent where the summons is sent immediately to him. If the prosecutor does not specify that the person complained against is employed in the salt department, and the summons or warrant in consequence is ordered to be served on him in the same manner as on other persons during the months of Kartik and Asarh, the officer serving the summons or warrant, on the circumstance of the defendant being so employed being notified to him by the agent or any of his officers, or by the defendant himself, is to deliver it to the nearest person empowered to execute securities, who is to proceed as above : but if the circumstance is notified to him by the defendant only, and he entertains doubts of his being so employed ; or if without such doubts he apprehends that the defendant will abscond while he is repairing with the process to the person empowered to execute the securities ; he is in such case to carry the defendant with the process to the person so empowered, and is not to release his person until the required security has been executed. Reg. X. 1819, sect. 21, cl. 4.

1607. The agent or other officer, through whom the summons or warrant is served, is to note on the back of it in what manner it has been served, and by whom the security has been executed. Reg. X. 1819, sect. 21, cl. 5.

1608. If a charge is preferred to a magistrate against any of the officers of the agents, or any person under engagements on account of the salt manufacture and employed therein, for an offence that is not bailable, and there appears to the magistrate sufficient ground for apprehending the person so charged, the warrant for his apprehension is to require him to appear immediately in person, and is to be executed at all times in the same manner as upon persons not so engaged or employed. But the officer, after securing the offender, is to give notice thereof to the agent, or head officer of the nearest aurung, or place of manufacture. Reg. X. 1819, sect. 21, cl. 6.

1609. In all cases in which the agents, or their head officers empowered for that purpose, become surety under any of the above rules for the appearance of any officer or person employed in the salt manufacture, or declare any party whom the person summoned offers as surety to be responsible, the agent is to be considered personally answerable for the due performance of the conditions of the security, in the event of the party for whom the security has been given not performing them himself; or, where the party himself has given the security, and it has been declared responsible by the agent or his officers, in the event of the party, or such surety, not performing them. Reg. X. 1819, sect. 21, cl. 7.

The agent to be held personally responsible for the performance of the condition of security for appearance, which is given by himself or officers.

1610. Notices to officers or other persons employed in the salt manufacture to appear as witnesses are to be served during the manufacturing season in the same manner as if they were parties in the cause; but such officers or persons are not to be summoned except when their attendance is necessary; and on their appearance they are to be examined and dismissed with all practicable despatch, so that they may be absent from the business of the manufacture as short a time as possible. Reg. X. 1819, sect. 21, cl. 8.

Notices to such persons to appear as witnesses.

1611. The agents, their assistants, uncovenanted European and native officers, are liable to be sued in the dewanny adawlut, should they apply any of the above rules regarding notices, summonses, and warrants, issued against persons employed in the manufacture of salt, to persons not bonâ fide so employed; and as those rules are intended only to prevent unnecessary interruptions to the manufacture, where it can be avoided without impeding the course of justice, magistrates are empowered in particular cases, in which it appears to them indispensably necessary for the purposes of justice, to order the personal attendance of any native officer or person in anywise concerned or employed in the salt manufacture, whether he be a party or witness in the prosecution, at any time during the manufacturing season, notwithstanding anything to the contrary in the above rules, and to cause process to be executed upon him for that purpose, in the same manner as upon other individuals; but in such cases the magistrates are to record on their proceedings their reasons for deviating from the above provisions, which are to be considered as the general rules for issuing and executing such notices, summonses, and warrants; and in the notice, summons, or warrant, they are to specify that it has been specially ordered to be so executed in virtue of the discretionary power vested in them by this clause; and they are, moreover, strictly enjoined to refrain from every unnecessary exercise of that power. Reg. X. 1819, sect. 21, cl. 9.

Salt agent and officers may be sued for improper application of the above rules.

The observance of those rules may be on sions

but reasons for the deviation to be recorded.

1612. The provisions contained in section 10, Reg. XXXI. 1793, [which regard persons employed in the provision of the Company's investment, and which are the same as those above quoted in regard to persons employed in the provision of salt] are extended to the undermentioned officers employed under the agents for the provision of opium:

The above provisions are applicable to certain officers in the opium.

The Dewan,
Naib Dewan,
Cash-keepers,
Mohurirs,

Nagree Writers,
Godown keepers,
Gomashtahs of Kotees,
Cash-keepers ditto,

Mohurirs ditto,
Parkhias,
Dandidars.

Reg. XIII. 1816, sect. 26.

to be
d of
names and sta-
of such offi-

1613. A copy of the register of the names and stations of the officers enumerated above in the native languages is to be transmitted, once in every year, to the magistrate; it is also the duty of the agent to keep the magistrate informed of any intermediate change. Reg. XIII. 1816, sect. 27.

Superintendents
P
formed of the si-
tuation of the cho-
kees and of the
officers attached to
them.

1614. Superintending officers of the salt chokees are to be careful to keep the magistrates, in whose jurisdictions the chokees are stationed, furnished with lists of the chokees, pointing out their situations and specifying the names of the officers attached to them; and in the event of any change taking place in the situation of a chokee, or among the officers belonging to it, the same is to be immediately notified. Reg. X. 1819, sect. 23.

Process how to

1615. In cases in which an officer of a salt chokee is charged before a magistrate with a bailable offence, the warrant is to be enclosed in a sealed cover to the superintendent of the chokee, to which the party is attached, who is to cause the officer summoned to give the requisite bail, or immediately to appear in person, or by vakeel, as the magistrate thinks proper to require in the warrant. Reg. X. 1819, sect. 25.

When charged
not

1616. If a charge is preferred to a magistrate on oath against any of the officers of the chokees for an offence that is not bailable under the regulations, and there appears to the magistrate sufficient ground for apprehending the persons so charged, the warrant for their apprehension is to be executed at all times in the same manner as upon persons not chokee officers. But the officer of the court, after securing the offender, is to give notice thereof to the superintendent of the chokee to which the offender is attached. Reg. X. 1819, sect. 26.

When summon-
ed as witnesses.

1617. A requisition to an officer of a salt chokee to appear as a witness is to be enclosed in a sealed cover to the superintendent of the chokee, to which such officer is attached, who is to cause the notice to be served in the regular manner; but such officers are not to be summoned excepting when their attendance is necessary, and on their appearance they are to be examined and dismissed with all practicable despatch, so that they may be absent from their chokees as short a time as possible. Reg. X. 1819, sect. 27.

Discretion vest-
ed in the courts to
deviate from these

1618. The discretionary power, granted by cl. 9, sect. 21 of this regulation (see para: 1611) to magistrates in special cases of persons concerned in the provision of salt under a salt agent, is equally vested in those authorities in regard to persons employed in the chokee department. Reg. X. 1819, sect. 28.

SECTION V.

OF BAIL.

Police.

In what cases
bail is not to be
taken.

In all other cases
it may not be re-
fused.

1619. Persons charged with murder, robbery, house-breaking, theft, arson, counterfeiting the coin, maiming or serious wounding, where the life of the person wounded is in danger, are not to be admitted to bail, if reasonable grounds appear for believing that such persons have been guilty of the crime imputed to them; but in all other cases, if sufficient bail is tendered for appearance before the magistrate, the police officer is to accept such bail, and immediately to release the party apprehended. Reg. XX. 1817, sect. 25, cl. 8.

1620. The amount of bail to be required by police officers is in no case to exceed what may be sufficient to prevent the parties absconding before the case comes before the magistrate, who is then to issue such further process or order as he judges proper. Reg. XX. 1817, sect. 24, cl. 3.

Bail is in no case to be excessive.

1621. The bail to be taken by police officers for appearance before the magistrate is to be in the form No. 35 of appendix A. Reg. XX. 1817, sect. 25, cl. 9.

Form of bail bond.

1622. Section 24, Reg. XX. 1817, expressly authorizes the police officers, on receiving a complaint for any bailable offence declared to be cognizable by the native officers of police to "issue a summons," upon the party or parties accused; but in practice, it is believed that this power has seldom or never been exercised. The Court calls attention to this rule, and observes that in no part of Reg. XX. 1817 is it provided that parties thus summoned shall not be discharged without giving bail for their appearance before the magistrate. On the contrary, the parenthetical condition, which appears in clause 4 of the section referred to, leaves it to be inferred that police officers may exercise their discretion in taking bail from parties summoned to the thana on complaint for a bailable offence being preferred against them; and other parts of the same section show that this privilege of summoning parties charged with bailable offences does not take away from the police officers the power of arresting the same parties, either in the first instance if circumstances should "require the immediate apprehension of the accused", or subsequently if the accused party should not answer to the summons. But in that case, as well as in all cases provided for in cls. 2 and 11, sect. 20; cl. 3, sect. 23; and cl. 8, sect. 25; Reg. XX. 1817, the general rule (to which all the others referred to are subordinate), contained in cl. 17, sect. 19 of the same Regulation, will come into operation, viz: that "no person who may once be apprehended" (not summoned) shall be discharged except on bail or under the special orders of the magistrate. Magistrates are bound to take care that their police officers understand and abide by the law enacted for their guidance. C. O. No. 21 of vol. 4. *W. P.*

Rules for conduct of police officers in requiring bail from parties summoned as distinguished from those arrested.

1623. In all complaints preferred for offences clearly bailable, and in which there is no ground for refusing bail, if offered, the magistrate is to lose no time in apprizing the accused that security will be received for his appearance, stating at the same time the amount required; and he is further to record the offer and the terms of it, taking care that the amount demanded is not excessive, or in any way disproportionate to the nature of the offence, or the circumstances in life of the accused. C. O. No. 272 of vol. 1.

Magistrate.

Magistrate is not to omit to offer release on bail in bailable cases, and to record the offer; and the amount is not to be excessive.

1624. The magistrates should limit their requisitions of security for appearance to such sums as it may appear equitable to recover if the conditions of the engagement are not performed; and they should be careful to ascertain, that the sureties accepted are sufficiently responsible to make good the amount eventually demandable from them. C. O. No. 70 of vol. 1.

The amount should be to such as would be to recover; and care to that the are good.

1625. Persons required to find bail are not to be kept in the nazir's house until security be furnished. C. O. No. 47 of vol 2.

Persons not to be confined in nazir's house.

Crimes which are not bailable.

1626. Persons accused of murder, robbery, housebreaking, theft, or counterfeiting the coin, provided there appear sufficient grounds for committing them for trial,^(a) are not to be admitted to bail. *Beng. Reg. IX. 1793, sect. 7. Ced. Prov. Reg. VI. 1803, sect. 7.*

Case of arson.

1627. In Benares and the ceded provinces the offence of setting fire to any house, village, or town, is also declared not bailable; but there is no express enactment to that effect in regard to the lower provinces. It would, however, seem to be implied in sect. 3, Reg. IX. 1807.* *Ced. Prov. Reg. VI. 1803, sect. 7. Reg. III. 1804, sect. 7. Ben. Reg. XVI. 1795, sect. 4, cl. 2.*

* c. ¶ 884.

Examples.

1628. The offence of "knowingly receiving stolen property" is a bailable offence, provided the original theft of such property does not form part of the charge. So also is the offence of embezzlement. Consequently a person apprehended on such charges, should be allowed the option of giving bail. *Const. Nos. 1237 and 1238.*

Explanation of the above rules as regards homicide.

If the charge is for culpable homicide not amounting to murder, the accused is to be admitted to bail.

* c. ¶ 870.

If the homicide was accidental or accessory.

1629. No species of homicide, except murder, is included in the provisions, which forbid the admission to bail of persons accused of murder. If the charge is for manslaughter, or any species of illegal homicide, not involving the crime of murder, the magistrate is authorized to proceed in the first instance, either by warrant for taking into custody, or by summons requiring bail, as he judges proper, on consideration of the circumstances of the case, and of the condition and character of the party accused. After the enquiry directed by sect. 5, Reg. IX. 1793 (*Ced. Prov. sect. 5, Reg. VI. 1803*)*, if the magistrate is of opinion that the evidence does not establish the crime of murder, but that there is sufficient ground for bringing the accused to trial before the sessions on a charge of manslaughter, or other culpable homicide, the party is to be held to bail for appearance before the sessions court; but the magistrate is authorized to release the accused, if the homicide, in which he appears to have been concerned, is clearly shown to have been accidental or justifiable under the Mahomedan law and the regulations. *Reg. IX. 1807, sect. 9, cl. 1.*

The principal of the above rule is peculiar to heinous crimes.

Bail may be admitted in all cases not declared unbailable.

The session judge may admit to bail.

1630. The principle of the preceding clause is applicable to persons appearing, from the magistrate's inquiry, to have been only privy or incidentally accessory to crimes of a heinous nature, without being concerned therein as principals, or as aiding and abetting, procuring, or instigating the perpetration thereof; and in all cases, whether of trial before the magistrate or before the sessions, if the admission of bail has not been prohibited by the regulations, and the bail tendered appears sufficient for securing the appearance of the accused, he is to be admitted to bail, until sentence is passed upon the charge against him. Moreover, in special instances, wherein the session judge, on a report from the magistrate, or on other satisfactory

(a) In English law, bail is admissible in all cases below felony, unless it is prohibited by some special act of parliament; and to refuse or delay to bail any person bailable, is an offence against the liberty of the subject in any magistrate by the common law as well as by the statute. By statute 7 Geo. IV. cap. 64 it is provided that if a charge of felony is supported by positive credible evidence of the fact, or by evidence which, if not explained or contradicted, raises a strong presumption, in the opinion of the justices, of the guilt of the party charged, he is to be committed for trial; but if the evidence in support of the charge is not in their opinion such as to raise a strong presumption of guilt, or if evidence is adduced on behalf of the prisoner which weakens the presumption of guilt, but if nevertheless there appears sufficient ground for a judicial enquiry, the prisoner may be admitted to bail. *Blackstone's Commentaries, book 4, chap. 22; and note by Christian.*

before him, deems it just and proper to admit to bail a person charged with an offence not bailable under the general provisions contained in the regulations, he is competent to instruct the magistrate to accept sufficient bail, instead of keeping the accused in confinement while the charge against him is under trial. The judge may likewise, in all bailable cases, wherein the bail required by the magistrate appears excessive, direct the magistrate to receive such bail as may be deemed sufficient to answer the purpose intended by it. Reg. IX. 1807, sect. 9, cl. 2.

and may direct
of bail required by
him.

1631. In cases committed for trial to the sessions, the session judge may exercise the power vested in him by the above provisions by instructing the magistrate to admit to bail any persons whom he has committed to close confinement, until they can be brought to trial at the sessions, if the offence charged appears to be of a bailable nature; or, though not within the description of offences declared bailable by the regulation, if the judge is of opinion that there is special reason for admitting the prisoner to bail, and sufficient bail is tendered by him, to stand his trial at the sessions. Reg. VI. 1818, sect. 3, cl. 3.

So, in cases committed to the sessions, the judge may always admit to bail.

1632. The session judge is further competent to hold to bail, or to direct the magistrate to admit to bail, any prisoner, whose trial is referrible to the nizamat adawlut, in consequence of the judge not concurring in the futwa of the law officer for the conviction of the prisoner. When the prisoner is unable to find bail, the judge should, with the least possible delay, transmit the proceedings, with a letter stating the grounds on which he does not concur in the futwa, to the nizamat adawlut; and the law officers of that court are to deliver their futwa, as soon as possible after the receipt of the trial, for the early sentence or order of the court. Reg. XIV. 1810, sect. 7.

In what cases the judge may admit to bail prisoners whose trials are referrible to the nizamat adawlut.

Rule served cannot

1633. At the termination of a trial by a session judge, the commissioner of circuit is not competent, under any circumstances, to direct that the prisoner shall be held to bail pending the reference to the nizamat adawlut. N. A. R. vol. 4, page 332.

cases.

1634. The session judge is not competent to admit to bail, pending an appeal to the sudder court, a prisoner whom he has convicted and sentenced. Reports L. P. 1854, part 2, page 324.

Judge cannot admit pending sudder court.

1635. When a prisoner on bail has not been apprehended until some time after the date of his sentence by the nizamat adawlut, a special report should be made to that court, through the session judge, for their orders as to the date from which the sentence should commence. N. A. R. vol. 3, page 49.

Persons on bail in such cases not being apprehended for some time.

1636. The session judge is at all times competent to require the magistrate to suspend execution of his order, and to direct the release of a prisoner on bail, until he shall have passed his final order, when justice appears to require that measure, whether he has or has not examined the proceedings on which the order is founded. Const. Nos. 489 and 657.

The judge when

1637. Whenever any persons charged with bailable offences are detained under examination in custody, the grounds of their detention are to be stated under the head of remarks in the magistrate's statement No. 1; and the judge should return to the magistrate any

offences to be stated in statement No. 1.

statement in which the required information is not given. C. O. No. 48 of vol. 3 ;
No. 98 of vol. 3, para. 32 of magistrate's rules.

The judge should
generally admit to
bail through the
magistrate.

1638. The session judge should generally direct the magistrate to admit to bail
accused of criminal offences while under trial; but cases may arise, though rarely,
would warrant the judge in accepting bail himself in the first instance. Such cases, how-
ever, cannot be provided for by any general directions, and must depend on their own pecu-
liar circumstances. Const. No. 111.

The bail-bond
has been passed.

1639. The bail bond of persons committed to the sessions is in full force until the trial
is concluded, which is not until final sentence is passed ; and no person on bail should be
committed to jail until a final sentence involving imprisonment has been passed upon him.
Const. No. 605.

A particular day
should be appoint-
ed for the attend-
ance in court of
persons on bail.

1640. Magistrates are not to require respectable persons, held to bail on charges of
a trivial nature, to remain for a length of time in constant attendance at the sudder station.
A particular day should be appointed for the attendance in court of persons on bail, when-
ever a longer period than one week is likely to elapse between the proceedings. C. O.
No. 287 of vol. 1.

Forfeiture.

Magistrate how
to proceed when
persons held to
bail do not attend
the

1641. Whenever a person held to bail for his appearance before the sessions neglects
attend at the appointed time, the magistrate is to call upon his sureties to produce him,
and on their failure is to report the case, with any reasons assigned by them for the non-
fulfilment of their engagement, to the session judge ; who is to determine, and instruct the
magistrate, whether the penalty of the security bond is to be immediately enforced, or whe-
ther further time is to be allowed to the sureties to produce the person for whom they are
responsible. Reg. VI. 1818, sect. 4, cl. 1.

Recovery of pe-
nalty in such
cases.

1642. When the judge, on consideration of the magistrate's report, directs the enforce-
ment of the security bond, the magistrate is to proceed to recover the amount of the penalty
from the sureties by the attachment and sale of any property belonging to them, in the
mode prescribed for the attachment and sale of property in satisfaction of decrees of the civil
courts ; or if the amount demandable is not paid, and cannot be realized from any property
belonging to the sureties, they are liable to confinement, by order of the magistrate, in the
civil jail for a period not exceeding six months. Reg. VI. 1818, sect. 4, cl. 2.

of judge

1643. The surety of a person held to bail for trial before the sessions failing to pro-
duce him, the bail becomes forfeited ; but the magistrate should not enforce the penalty, until
he has procured the permission of the session judge. Const. No. 290.

Rules for the
enforcement of a
bail-bond when
it is not paid
before a magis-
trate engaging to
produce in his court
a party charged
with a criminal of-
fence.

1644. Whenever a person, who has executed before a magistrate a security bond
engaging to produce in his court a party charged with a criminal offence, fails to produce
him, he is to be called upon to show cause why the penalty, to which he is liable by his
engagement, should not be enforced ; and unless satisfactory reason is assigned against en-
forcing the bond in whole or in part, it should be put in execution according to the same
rules and by the same process observed by the civil courts in enforcing payment of money
to be due by a decree. If the surety is dead, the magistrate is to proceed against

his heirs and executors to the extent of any property belonging to the deceased, which has come to their hands. On this account the bail bond should always specify the responsibility to which the heirs and executors of the surety will be liable in the event of his demise. A surety, or in the event of his demise his representative, may at all times obtain a discharge from further responsibility by delivering up the person for whom he is responsible; and magistrates should always attend to any application made to them for that purpose, at the same time requiring the persons so delivered up to find other and sufficient security. In carrying these rules into effect, when the magistrate has not received any special orders from the session judge or nizamat adawlut, he may exercise his discretion in not enforcing the penalty, either wholly or partially, when the circumstances of the case appear to call for indulgence, or any equitable reason exists for dispensing with the penalty. Const. No. 1233.

1645. All bail bonds for prisoners released upon bail are to be for a specific sum, the amount of which is to be determined by the magistrate, upon a due consideration of the case and the circumstances and situation in life of the parties, and are to contain a clause declaring the amount forfeited to government in the event of the condition of it not being performed. *Beng. Reg. IX. 1793, sect. 5. Ced. Prov. Reg. VI. 1803, sect. 5.*

*** Forms.**
What the bail-bond is to contain.

1646. The bail, to be taken in all cases of persons being held to bail for trial before the sessions courts, is to be in the form No. 29 of appendix A. *Reg. IX. 1807, sect. 10.*

Form of bail-bond for trial before the sessions court; and before the

1647. The bail to be taken for appearance before the magistrate is to be in the form No. 3 of appendix A. *Reg. IX. 1807, sect. 3, cl. 4.*

1648. In cases committed to the sessions, the magistrate is to bind over the complainant to appear and carry on the prosecution, and the witnesses to attend and give their evidence: the recognizances to be taken from such persons, as well as all bail bonds for prisoners released upon bail, are to be for a specific sum, the amount of which is to be determined by the magistrate, upon a due consideration of the case, and the circumstances and situation in life of the parties, and are to contain a clause declaring the amount forfeited to government, in the event of the condition of it not being performed. *Beng. Reg. IX. 1793, sect. 5. Prov. Reg. VI. 1803, sect. 5.*

Recognizances.
To be taken from magistrate from

1649. Prosecutors and witnesses, whose attendance is necessary at the criminal courts, are to execute recognizances (mochulkas), in specified forms* before the police officers, to appear before the magistrate on a specific day; which is to be the day, whereon the accused is bound to appear if he has been admitted to bail, or on which he is expected to arrive at the magistrate's place of residence if he is to be forwarded thither under custody: the police officer, in whose presence the recognizance is executed, is to forward it with his report to the magistrate, and is to deliver to the prosecutor or witness a despatch addressed to the magistrate and drawn up after the form No. 40 of appendix A, which he is to be required to deliver in person to the magistrate unaccompanied by any officer of police. *Reg. XX. 1817, sect. 23,*

Recognizances to

*No. 88 and 39 Appendix A.

1650. Under the terms of the exemption contained in art. 1, schedule B, Reg. X. 1829, viz. "mochulkas and recognizances taken from prosecutors and witnesses to secure atten-

those taken by

investigation, may
be on plain paper.

dances at criminal trials,* (a) the recognizances referred to in the two preceding paragraphs, as well as the mochulkas which it is the common practice for magistrates to take from parties in cases before them to secure their attendance during the investigation, may be taken upon unstamped paper. Const. No. 679.

to be

1651. Mochulkas or recognizances should be required from defendants in petty cases, in order to secure their attendance, as seldom as possible; but, if it appears necessary in any particular instance to require a mochulka from the defendant, the amount of the stamp must in the first instance be provided by the prosecutor,—to be refunded by the defendant at the conclusion of the case, if the magistrate considers it proper to order a refund. Const. No. 1287.

first instance.

SECTION VI.

OF SEARCH FOR STOLEN PROPERTY, AND OF UNCLAIMED PROPERTY.

Form of warrant.

1652. Warrants of search for stolen property are to be drawn out in the form No. 16 of appendix A. Reg. I. 1811, sect. 11, cl. 2.

To whom they
are to be address-
ed.

1653. All search warrants, issued under this section, are to be addressed to the police darogah, within whose jurisdiction the house or premises required to be searched are situated, or to any other public and registered officer of police to whom the magistrate thinks fit to commit the execution of that duty. Reg. I. 1811, sect. 11, cl. 3.

Upon what in-

1654. Search warrants for the recovery of stolen property are not to be issued, unless the complainant or informer makes oath or subscribes a solemn declaration that a robbery has been actually committed, and that he has reasonable cause to suspect that the effects stolen are lodged in such a house or place, or unless it appears incidentally, from any proceeding holden by the magistrate, that there are grounds to believe that stolen property is there deposited. Reg. I. 1811, sect. 11, cl. 4.

1655. Under these provisions a magistrate may issue, or require the magisterial authorities of another jurisdiction to issue a search warrant upon any incidental information before him. N. A. R. vol. 1, page 273.

Search in cases of
plunder.

1656. The nizamat adawlut did not consider that any general rule should prevail either directing or prohibiting search for property in cases of plunder. But they were of opinion, that in particular instances the recovery of property so obtained should be attempted equally as that of stolen property, both for the indemnification of the owners and to obtain better proof against the perpetrators of outrages. There may be cases therefore in which, in the exercise of a sound discretion, the police and magistrate should endeavour to recover

(a) It may be noted to remark that these words are not inserted in the government copies of the regulations, or in the

plundered property; strictly, however, under the rules for the recovery of stolen property prescribed by Reg. XX. 1817. Reports *L. P.* 1852, part 1, page 494.

1657. Where a person made a false complaint of dacoity, having concealed property pledged to him with a view to defraud the owners of it, and the police searched his house, the court held that the search authorized by sect. 16, Reg. XX. 1817 is that of the house of a party against whom there is a charge of his having plundered or stolen property in his possession, not that of the house of a complainant, whom the police or the magistrate suspect of having made a false statement of a robbery, and of having fraudulently concealed property which had been placed under his charge and which therefore could not be plundered or stolen property. Proceedings of the nature of fraud may expose a party to a civil action, or to a criminal prosecution; but the measures taken must be of an appropriate and legal nature. *Colebrooke's Reports of Summary Cases*, page 111.

The house of the complainant cannot be searched on suspicion of false complaint.

1658. The darogahs of police are prohibited, except under the special orders of the magistrate, from searching the interior of any house or building for stolen property, unless a list of the articles missing is delivered or taken down in writing at the thana with a declaration, stating that a robbery has been committed, and that the informant, whether he is the owner of the property, or accomplice in the offence, or other person, has substantial ground to believe that the property is deposited in such house or place. Reg. XX. 1817, sect. 16, cl. 2.

Police officers are not to search the interior of a dwelling without written declaration, or special order from the magistrate.

1659. In the case of search warrants issued from the magistrate's office, the police officers are to report the execution of the process on the back of the warrant. Reg. XX. 1817, sect. 16, cl. 3.

Execution of warrants to be reported.

1660. The darogahs, when not specially instructed by the magistrate, are to transmit all representations made to them, regarding the receipt or concealment of stolen property, at or before the time when they proceed to the search, for the information of the magistrate, and for any orders which he may deem it necessary to issue on the subject. They are also to take the necessary precautions for preventing any such property from being clandestinely removed. Reg. XX. 1817, sect. 16, cl. 4.

Representations regarding stolen property are to be sent to the magistrate.

1661. The search for stolen property is to be proceeded on without previous notice being given to the owners or inhabitants of the house, and is uniformly to be made in the day time, unless there is substantial reason to believe that, in case of any delay, the property sought will be removed. The process is invariably to be conducted by the darogah, mohurir, or jemadar, in person; and if the darogah cannot himself proceed, he is to issue a warrant according to the form No. 41 of appendix A. The search is to be made in the presence of three or more respectable inhabitants of the village, in which the house or place searched is situated, who are to subscribe their names to the report made to the magistrate's office; and an opportunity is, in every instance, to be afforded to the occupant of the house of attending the search. Reg. XX. 1817, sect. 16, cl. 5.

Particulars relating to search.

What persons are to be present.

Opportunity to be given to accused to be present.

1662. When the search is made in the absence of the accused, it must be shown on the record that an opportunity was given him, or was sought to be given him, of being present. *N. A. R.* vol. 6, page 344.

If accused person is absent.

be made at night.

1663. If a magistrate has in any instance reasonable ground to apprehend, that stolen property will be removed if the search is postponed, he may order the search to be made immediately, whether it is during the day or night. Reg. I. 1811, sect. 11, cl. 13.

Caution against the surreptitious introduction of articles into the house under search.

1664. In conducting the search directed by the above rules, the police officers are to be careful that no articles of property are surreptitiously introduced into the habitation at the time of search; and no prosecutor, or informer, or any other person, is to be permitted to enter, unless he allows himself to be strictly examined in the first instance. Reg. XV. 1817, sect. 16, cl. 6.

Rules to be ob-

1665. If the occupant of the house, ordered to be searched, is of such a rank in society as would render it improper and objectionable, according to the prevailing opinions and usages of the country, for the police officers to enter the zenana or apartments of the women, they are to give due notice for the removal of any women within the zenana; and after furnishing means for their removal in a suitable manner (if they are women of rank who, according to the customs of the country, cannot appear in public) they are to enter the zenana apartments for the purpose of completing the search, using at the same time every precaution consistent with these provisions for preventing the clandestine removal of property. Reg. XX. 1817, sect. 16, cl. 7.

When any property, alleged to be stolen, is found, what steps the police are to take.

1666. If, on examining the premises ordered to be searched, any property is discovered which is alleged by the complainant or informer, at whose instance the search is made, to have been stolen or plundered, or which there may be any other reasonable ground to believe has been acquired by theft or robbery, the police officers are to endeavour to trace the actual proprietor from whom the property has been plundered or stolen, and are to question the occupant of the house regarding the means by which the property was obtained; and in the event of his being unable to give a satisfactory explanation, they are to forward the property, together with the person in whose house it has been discovered, to the magistrate. Reg. XX. 1817, sect. 16, cl. 8.

Rules for the disposal of suspicious property found in the search but unclaimed.

1667. Should any suspicious property be discovered in the course of a search conducted under the foregoing provisions, and should no person lay claim to the same, the police-darogah is to compare the articles with such lists of property stolen or plundered, as have been previously delivered in to the thana in other cases, and recorded in the register prescribed by cl. 13, sect. 8, of this regulation; and, in the event of the property corresponding with the amount given in the lists, he is either to send the articles for the inspection of the supposed proprietor, or is to summon him to the thana for the purpose of identifying his property. Reg. XX. 1817, sect. 16, cl. 9.

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1668. On the occasion of searching a house under the foregoing rules, the police officer is to be careful to notice the particular spot in which the property is found, the time of finding, and the name of the finder; and all property which is claimed as having been stolen or plundered, as well as all property of a suspicious nature found on persons charged with robbery, burglary, or theft, or which is seized by police officers under suspicious circumstances, is to be forwarded without delay to the magistrate together with a dispatch drawn up in the form No. 12 of appendix C. A copy of the despatch being registered as

prescribed by cl. 11, sect. 8 of this regulation, the original is to be given to the burkundaz, charged with the conveyance of the property, to be delivered to the nazir on his arrival at the sudder station. Reg. XX. 1817, sect. 16, cl. 10.

1669. Police officers are to be particular in the transmission of the despatch prescribed above. A session judge, presiding at any trial at all depending on the question of the discovery of stolen property by police officers on a search, is to enter the original despatch upon the record of the trial. C. O. No. 247 of vol. 1.

Care is to be taken regarding this despatch, which is to be filed in original on the record of trial in sessions court.

1670. Articles of value, and of small bulk, are to be fastened up in a box, petarah, or bag, and the seal of the thana affixed. Each article of property is to have a separate number (written on paper with the seal of the thana attached to it) to correspond with the number contained in the first column of the despatch, and darogahs, when describing the property in their reports, are invariably to quote the number affixed to each article. Reg. XX. 1817, sect. 16, cl. 11.

Rules for transmission of article bulk.

1671. Police officers are to pay strict attention to this rule, as the magistrate and session judge are required to number and describe the property in their proceedings according to the number and description used in the despatch of the police officer. C. O. No. 276 of vol. 1.

Care is to

1672. No property is to be removed from a house by a police officer, unless it is claimed or recognised as having been stolen or plundered, or considered to be suspicious; and no property, once removed, is to be returned without the special instructions of the magistrate. Reg. XX. 1817, sect. 16, cl. 12.

Only claimed property is to be returned without orders of magistrate.

1673. On the occurrence of a heinous robbery, burglary, or theft, the darogah is to transmit a list of the property stolen to the proprietor or manager of the estate, in which the crime has been committed, with an injunction to cause the list to be affixed in a conspicuous place, and also published in the several bazars and haths situated in the estate; at the same time requiring all gold and silver smiths, retail dealers, and other persons, to give notice to the police officers against persons offering such articles for sale. Reg. XX. 1817, sect. 16, cl. 13.

A list of the property stolen is to be published in the neighbouring bazars; and persons to whom it is offered for sale are to give notice to the police.

1674. Whenever the person, in whose possession stolen property is found, denies all knowledge of the theft or robbery, and asserts that he procured the property by honest means, the police officers are to require him to state the circumstances under which he became possessed of the property, and are to endeavour to ascertain through whose hands it has passed, as well as to trace the persons by whom the robbery or theft has been committed. Reg. XX. 1817, sect. 16, cl. 14.

Inquiries to be made by police from persons in whose possession the property is found.

1675. If the person, in whose possession the property was found, is unable, after the above and such further examination as the magistrate may make, to give a satisfactory account of the means by which it was acquired, and the magistrate, on consideration of that and all the other circumstances of the case, thinks that there are strong grounds for believing that the property was actually stolen or otherwise illegally acquired, he is to detain the property, and issue a publication (supposing no person to have hitherto appeared to claim it)

How the magistrate is to proceed in such cases

specifying the particular articles of property discovered and suspected to have been stolen or otherwise dishonestly acquired, and requiring any person who has claims to it to appear and establish his right thereto within six months from the date of the said publication. Reg. I. 1811, sect. 11, cl. 8.

If claim be made.

1676. Whenever any person advances claims to property so discovered, the magistrate is of course to put the case into a regular course of prosecution under the general regulations. Reg. I. 1811, sect. 11, cl. 9.

If no claim be made, and if the party found in

to

1677. If no person appears within the six months to claim the property, and if the party in whose possession it was found has been unable to show that it was legally acquired, and to remove the suspicions which existed that it was dishonestly obtained, the property is in such case to be declared by the magistrate confiscated to government. Reg. I. 1811, sect. 11, cl. 10.

Persons finding
how to proceed.

1678. Any person who finds within his house or premises property not his own, which he has reason to believe lost or stolen property, or to have been deposited within his house or premises with a malicious intent, is to convey it within twenty-four hours after finding it to the nearest darogah, and to report the circumstances attending its discovery. The darogah is to commit to writing the circumstances which are stated by such person, and to cause the same to be signed by him, and attested by two or more witnesses present. Such attested writing, together with the property found, is then to be forwarded by the darogah without delay to the magistrate. Reg. XX. 1817, sect. 16, cl. 15.

Confiscated or-
and
to be broken
up and sold.

1679. Whenever the necessity may, in the opinion of the magistrate, cease to exist for retaining any longer any gold or silver ornaments, or brass or copper utensils, which have been confiscated to government, such ornaments and utensils are to be broken up and sold at his public cutcherry as bullion or old metal. Reg. I. 1811, sect. 11, cl. 11.

All unclaimed

Rules for its
transmission.

1680. All unclaimed property, whether cattle, boats, timbers, or other goods or chattels, is to be considered as belonging to government, and the police darogahs are to forward any property of this description, which may come into their hands, to the magistrate; or, if any article of unclaimed property cannot be easily moved, the darogah is to make over charge of such article to the local zumeendar, manager, or head person of the village, until the orders of the magistrate in regard to its disposal can be obtained. (a) Reg. XX. 1817, sect. 16, cl. 16.

Custody and dis

1681. Unclaimed property is not to be confounded with the property of persons dying intestate (lawaris). All property of the former description, which comes into the hands of the police officers, is to be forwarded under the above provision to the magistrate, with whom the disposal of it clearly rests, subject of course to the control of the superintendent of police and government, without any interference on the part of the civil court. With regard to the custody and disposal of the property of persons dying intestate, cl. 7, sect. 16, Reg. III. 1803 (*Beng.* sect. 7, Reg. V. 1799) contains a specific provision to the effect that should no claim be preferred to it for twelve months, an inventory of the property, together with a report of the circumstances of the case, is to be submitted by the judge to govern-

(a) For rules regarding the discovery of hidden treasure, vide Reg. V. 1817. The authority with whom the disposal of it rests in such cases is the civil judge.

ment; whenever therefore any property of that description comes into the hands of a magistrate, he should forward it immediately^(a) to the civil judge. C. O. No. 3 of vol. 3. Const. No. 927.

1682. The articles of war, Nos. 102 and 103, vest the administration of the estate of any deceased officer or soldier, or person receiving public pay drawn by any officer in charge of a public department belonging to the army, in the military authorities, whenever there may be no heir or executor of the deceased on the spot at the time of decease, thereby precluding the jurisdiction of the civil courts in regard to the same. Whenever therefore any such property may come into the hands of a magistrate, he is, instead of forwarding it to the judge of the district, to communicate with the officer commanding the regiment or in charge of the department to which the deceased belonged, and to comply with the instructions which such authority may give regarding the disposal of it. C. O. No. 57 of vol. 4. *W. P.*

If the deceased person belonged to the army.

1683. Registers of unclaimed property and property of intestates, disposable under the above rules, are to be kept in the prescribed forms given in Nos. 14 and 15 of appendix B. C. O. No. 151 of vol. 3.

Registers of such property.

1684. A magistrate has no authority to direct the search of a house for the discovery of contraband opium *as such*; but he is not restricted from searching for the discovery of opium or any other deleterious drug, which, from information before him, he has reason to believe has been used as an instrument of death, and of which he considers it necessary for the ends of justice that a discovery should be effected. Const. No. 1241.

Magistrate's competency to search houses for opium.

1685. The search for plundered or stolen property, whether under the special orders of the magistrate, or under information received by the native officers of police, is to be conducted agreeably to the foregoing provisions; and the magistrate is to take proper notice of any instances in which the police officers deviate from the rules laid down in them. C. O. No. 55 of vol. 2.

Police officers are to pay strict attention to the above rules.

SECTION VII.

OF DISTRAINT AND ATTACHMENT.

1686. Landholders, farmers, and their local agents, or other persons empowered by the regulations to distrain for arrears of land rent, who may be opposed, or may be apprehensive of resistance in effecting the regular distraint, or in maintaining possession of property previously distrained, may apply to the darogah of the thana, in whose jurisdiction the property is, for assistance in making or maintaining the regular distraint; and the darogah, in order to support the distrainer and to prevent a breach of the peace, on the

Upon resistance, the darogah is to depute a peon with a written process.

(a) In the rules passed by the Bengal Government "for the guidance of deputy magistrates and assistants in charge of sub-divisions," dated February 18, 1846, it is directed that this kind of property should be forwarded weekly through the magistrate to the civil court. See page 158.

PROCESSES.

distrainer certifying on oath or by a solemn declaration the opposition he has experienced, or the resistance which he apprehends, is to depute a muzkooree peon, with a written process, bearing the seal of the thana and the signature of the darogah, and drawn up according to the form No. 42 of appendix A.(a) Reg. XX. 1817, sect. 27, cl. 2.

of peon
so deputed.

1687. It is the duty of the muzkooree peon to exhibit such process to the defaulter, and to use every means in his power to prevent resistance or other breach of the peace; and, unless the arrear be liquidated, to support the distrainer in the exercise of the powers vested in him by the regulations.(b) He is to give due attention to the whole conduct and proceedings of the distrainer, so as to be able to give evidence thereon, if afterwards required either before the judge or magistrate. Reg. XX. 1817, sect. 27, cl. 3.

If such peon be

Jemadar is to proceed to his assistance.

1688. Whenever any peon so deputed deposes that he has been opposed in the execution of such duty, or the darogah is satisfied, from the representation made on oath [or solemn declaration] by the distrainer in the first instance, that any resistance has been offered, amounting or likely to amount to a breach of the public peace, the darogah is either to proceed in person or to depute the mohurir or jemadar to support the distrainer and maintain the peace. He is also to proceed in person, or to depute the mohurir or jemadar, whenever it is proposed by a distrainer, under the powers vested in him by the regulations,(b) to force open the outer door, or to search the private apartments, of a dwelling house in which the distrainable property of a defaulter appears to have been concealed. Reg. XX. 1817, sect. 27, cl. 4.

Dwelling houses can be forced open in the presence of these officers only.

(a) Such cases should not be entered in the statements as attempts at affray. Police Report for 1843, para. 218.

(b) The following are the provisions under which a distrainer may force open places for the purpose of attaching property; they are expressly modified by the provisions in the text.

Distrainers are empowered to force open any stable, cow-house, barn, golah, granary, or other building, and to enter any dwelling house, the outer door of which may be open, (excepting the apartments in such dwelling house which may be appropriated for the zenana or residence of women), and to break open the door of any room in such dwelling house, for the purpose of attaching any property belonging to a defaulter which may be lodged therein. But if any person shall enter a dwelling house, or break open any stable, cow-house, barn, golah, granary, or other building, not occupied by, or in the possession of the defaulter, to distrain property belonging to him, and no such property shall be found therein, the distrainer shall be liable to prosecution by the occupant or possessor, for entering such house, or breaking open such stable, or other building, and the court shall award to him damages according to the circumstances of the case, with all costs of suit. When a distrainer may have reason to suppose that the property of a defaulter is lodged within a dwelling house, the outer door of which may be shut, or within any apartment appropriated to women, which by the usage of the country is considered private, he is at liberty to represent the same to the police darogah, within whose jurisdiction the house is situated; and on such representation the police darogah is to send a police officer to the spot, in the presence of whom the distrainer is authorized to force open the outer door of the dwelling house, in which he may have reason to suppose the defaulter's property to have been lodged, in like manner as he is above authorized to break open the door of any room within a dwelling house, except the zenana. He may also, in the presence of the police officer, after due notice given for the removal of any women within the zenana and after furnishing means for their removal in a suitable manner, if they be women of rank who according to the custom of the country cannot appear in public, enter the zenana apartments for the purpose of attaching any of the defaulter's property deposited therein; but such property if found shall be immediately removed from such apartments, after which they are to be left free to the former occupants; and nothing in this section is to be understood to authorize any distrainer, or his agent, to force open the outer door of a dwelling house, or to enter the apartments of women, which by the usage of the country are considered private, in any other mode than that herein prescribed; a wilful deviation from which will subject the offender to heavy damages, besides forfeiture of the arrear of rent on account of which the distress may be levied. *Beng. Reg. XVII. 1793, sect. 21, modified by Reg. VII. 1799, sect. 10. Ben. Reg. XLV. 1795, sect. 19, modified by Reg. V. 1800, sect. 10. Cal. Proc. Reg. XXVIII. 1803, sect. 19, cl. 1 and 2.*

1689. The regular burkundazes of the police establishment are not to be employed to aid distrainers for arrears of land rent, except in cases where the darogah, mohurir, or jemadar, proceeds in person under the rules above prescribed. Reg. XX. 1817, sect. 27, cl. 5.

Burkundazes are to assist in distraint only under the orders of these officers.

1690. Any person in whose favor a summary award of the civil court has been passed for the (indigo) produce of a defined spot of land, may place a watch over it to prevent the cutting and removal of the plant; and in the event of any attempt being made to remove it, he may apply to the nearest police darogah, whose duty it is, on such a decree being exhibited, to give every aid in his power. Reg. VI. 1823, sect. 4, cl. 1.

In the case of a summary award for indigo plant.

1691. The landholders, farmers, and other local agents, and indigo planters, and other persons, are prohibited from using stocks, or any other instrument of restraint, for the purpose of confining ryots, or other individuals indebted to them, on any account whatever; and the darogahs of police are to report to the magistrates, for such orders or process as appear proper under the general regulations, all instances which come to their knowledge of a violation of this rule. Reg. XX. 1817, sect. 27, cl. 6.

Landholders, indigo planters, and others are not to use stocks or other instruments of restraint.

1692. Whenever a muzkooree peon, not receiving wages from government, is employed by a police darogah under the above provisions, he is to receive tulubana from the person, at whose instance he is employed, at the rate of two annas per diem; and the darogah is not to issue any process by the hands of a muzkooree peon, until the estimated amount of the tulubana, required for his fixed allowance at the above rate during his employment, is deposited in advance. The darogahs are enjoined to prevent the muzkooree peons from demanding or receiving, directly or indirectly, from any party, in cases in which they are employed, any allowance or gratuity, exceeding the above rate; and are to report to the magistrate any instances which come to their knowledge of a violation of this rule. Reg. XX. 1817, sect. 27, cl. 7.

Allowance and mode of payment of peons, not in the service of government, employed under the above provisions.

1693. In order to check as much as possible the employment of muzkooree peons in cases not strictly provided for in the regulations, magistrates are to require their darogahs to report whenever they employ persons of that description; stating their reasons for so doing, and by whom the tulubana (which is never to exceed the rate specified above) has been defrayed. C. O. No. 329 of vol. 1.

Check on the employment of muzkooree peons by the police.

1694. The practice of retaining a number of peons at the thana, for the ostensible purpose of aiding in the distraint of property under the rules of sect. 27, Reg. XX. 1817, is irregular; and leads to much extortion and oppression by their constant illegal employment in police matters, and the consequent demand of tulubana in such cases. Magistrates are to leave with each darogah only sufficient badges for him to use as he may have occasion. C. O. Sup. Pol. L. P. No. 10 of 1844.

Muzkooree peons are retained but to be enquire

1695. It being a frequent practice with under-tenants to lodge unfounded complaints in the criminal courts against persons attaching their property, as well as against the officers employed in collecting their rents, and likewise to cause their being summoned as witnesses in causes with the merits and circumstances of which they are totally unacquainted, for the

Unfounded complaints by under-tenants against distrainers or persons c rents.

sole purpose of creating embarrassment and delay in the collection of the rents, the courts of justice are required at all times to discourage and punish such culpable practices, as far as the power vested in them by the regulations may admit. Sect. 10, Reg. IX. 1793,* is to be strictly enforced in all cases of litigious and unfounded complaints, of the nature herein referred to, before the magistrate. *Beng. Reg. VII. 1799, sect. 12. Ben. Reg. V. 1800, sect. 12.*

Breach of the peace in resisting legal attachment.

1696. If any under-tenant resists or causes to be resisted the legal attachment of his property for arrears of rent, he and all persons concerned with him in resisting the attachment are liable to be apprehended and prosecuted before the criminal courts for any breach of the peace committed by them in such resistance to the attachment. *Beng. Reg. VII. 1799, sect. 9. Ben. Reg. V. 1800, sect. 9. Ced. Prov. Reg. XXVIII. 1803, sect. 17, cl. 2.*

Custody of pro-

1697. No person can be compelled against his will to take charge of property distrained, or attached. If however any one should take charge of the property voluntarily, he of course becomes responsible for the faithful discharge of his engagement, and is liable to prosecution before the civil court for damages which may have arisen from his failing to do so. No summary proceedings, however, can be instituted against him. Generally the person, at whose instance the property is distrained or attached, must be considered answerable for the safe custody of it during the period of distraint or attachment. *Const. No. 958.*

Punishment for breach of attachment made by magistrate.

1698. In cases of distraint for arrears of rent, the punishment for resisting or breaking attachment, as prescribed by sections 19 and 20, Reg. XVII. 1793 and the corresponding enactments for Benares and the ceded provinces, consists of imprisonment and damages to be enforced by the civil courts. But there appears to be no enactment regarding such offences where the distraint has been made by the magistrate; and it would seem that he must proceed as in a case resistance of process, for which subject see section 10, page 314.

SECTION VIII.

OF EXECUTION OF PROCESS WITHIN THE LIMITS OF THE SUPREME COURT.

other places.

1699. It is lawful for the court of nizamat adawlut to execute or cause to be executed, upon all persons subject to the jurisdiction of such court, all manner of lawful process of arrest within the limits of the town of Calcutta, in the same manner as such court may, by virtue of any power now vested or hereafter to be vested in it, lawfully execute or cause to be executed such process in any place without the said limits, any Act, charter, or other matter or thing to the contrary notwithstanding; provided always that all such process, which is executed within the limits aforesaid, is in writing, and has underwritten or indorsed thereon, or otherwise annexed thereto, a translation thereof, or of the substance thereof, in the English language and character, signed by one of the judges of the court from whence it issued. 53 George III. cap. 155, sect. 113.

Process to be in writing, with English translation, and signed by a judge.

1700. The provisions of Act VII. 1854, and of this Act [under which every criminal process, issued in one part of the territories under the government of the East India Company, may be executed within the jurisdiction of any other magistrate if endorsed by him, for which see paras. 190 to 200], do and shall extend and apply to any warrant or other process of any magistrate having jurisdiction in the territories beyond the local limits of the supreme court, which shall be executed within those limits. Provided that, if a magistrate having jurisdiction within those limits shall object to endorse any warrant or other process on account of any apparent defect therein, or for any other cause, he shall refer such warrant or other process to a judge of the supreme court, who shall deal therewith according to the provisions of Act XXIII. 1840. Act XVII. 1856, sect. 3.

Mofussil
to send process to
be indorsed by
magistrate, who
may refer to judge
of supreme court ;
deal with it under
the following rules.

1701. Any writ, warrant, or other process, issued by any court, judge, or magistrate, in the territories beyond the local limits of the supreme court, may be executed within those limits in manner following:—a copy of such writ, warrant, or other process authenticated as such by the attestation of the court, judge, or magistrate, signing or issuing the same, accompanied by a certified translation in the English language, is to be presented to any judge of Her Majesty's court, who may thereupon, under his hand and signature, indorse and direct the same to be executed by the sheriff, or by any justice of the peace, according to the nature of the process. Act XXIII. 1840, sect. 1.

Mofussil courts
may execute by
sending copy of
process for the in-
dorsement of a
judge of the su-
preme court.

1702. Upon the delivery of the process so indorsed to the sheriff, he is to make a memorandum of the date of such delivery, and is to execute the process in like manner as if it had originally issued from Her Majesty's court, and had been delivered at the date as appearing by the memorandum; and the sheriff is to make no distinction as to priority or otherwise between the execution of any process originally issued from Her Majesty's court, and the execution of any process under this Act. But all processes, whether original, or indorsed as aforesaid, are, amongst each other, to be subject to the same rules touching the mode and order of execution as are now established in respect of processes originally issued from Her Majesty's courts of justice. Act XXIII. 1840, sect. 2.

Such copy to be

1703. The sheriff is liable to be proceeded against in Her Majesty's courts of justice for all matters touching the execution of any process executed under this Act, in like manner as if the same had originally issued from Her Majesty's court. And all persons and property seized or detained under any process executed by virtue of this Act are to be dealt with in like manner as if such persons or property had been seized or detained under the like process issued from Her Majesty's court. Act XXIII. 1840, sect. 3.

Sheriff may be
proceeded against
regarding the ex-
ecution of,—and
persons and pro-

court.

1704. All persons disobeying or obstructing the execution of any process indorsed under this Act are punishable in Her Majesty's courts of justice, in like manner as if the same had issued from such courts; provided that, in the case of process for attendance of witnesses, Her Majesty's courts are to be governed by the like rules touching expenses and other matters as are established in regard to subpoenas issued from such courts. Act XXIII. 1840, sect. 4.

Persons

punishable as if
process of
court

1705. In the case of persons seized or detained by virtue of any process executed under the authority of this Act by any justice of the peace or sheriff, it is the duty of such justice of the peace or sheriff, if so required by the indorsement of the judge, to

Persons detained
under such pro-
cess to be
ed to the persons

indicated in the indorsement.

deliver the party in custody to such authority or persons as are particularly specified in such indorsement, and who have been charged with the execution of the process by the authority originally issuing it, and for that purpose to cause the party in custody to be conveyed to any place within the Company's territories beyond the jurisdiction of Her Majesty's courts. Act XXIII. 1840, sect. 5.

Judge of supreme court may remit the process for amendment;

1706. In the case of any process required to be indorsed under the authority of this Act, it is lawful for the judge, who is required to indorse the same, to remit it for amendment to the authority issuing the same, if it appears to be defective in any matter of form. Act XXIII. 1840, sect. 6.

and may direct bail to be taken.

1707. In the case of any process, required to be indorsed under the authority of this Act, for the seizure or detention of any person, it is lawful for the judge, who is required to indorse the same, to direct by indorsement that bail (the amount and number of sureties to be specified in such indorsement) may be taken; and for this purpose to call for such documents and to make such inquiry as he thinks proper.(a) Act XXIII. 1840, sect. 7.

provisions;
1st. How to be directed and sent.

1708. The following rules are to be observed in the service of processes under the above provisions. *First.* Every criminal process is to be directed to the justices of the peace of the town of Calcutta, but forwarded in an envelope to the Company's attorney, either by dawk or by the hands of a peon or other public officer as may be most convenient, with a letter drawn up in the form No. 43 of appendix A. The Company's attorney is to prepare it for indorsement by a judge of the supreme court, and after indorsement to transmit it (accompanied with the letter above-mentioned) to the police office for execution. *Second.* Any money, that it is requisite to send, is to be remitted by a bill on the general treasury from the collector of the district. *Third.* All subordinate judicial officers are to submit the processes of their courts, which require execution under the above provisions, to their European principal, to be by him forwarded in the prescribed manner to the Company's attorney. *Fourth.* All processes are to be drawn up agreeably to the forms Nos. 44 to 53 of appendix A, or agreeably to such other forms as may from time to time be circulated by the nizamat adawlut. *Fifth.* The party, at whose requisition any witnesses are summoned, must be prepared to pay to the witness such sum for his expenses as the judges of the supreme court consider reasonable and proper. *Sixth.* Judges and magistrates are to be careful that their own processes are drawn up correctly, and they are also to ascertain that the processes of the subordinate courts, that are forwarded to the Company's attorney, are drawn up agreeably to these rules and to the Acts and regulations of government. C. O. Nos. 82 and 185 of vol. 3.

2nd. Money how to be sent.

3rd. Process of subordinate court.

4th. Forms.

5th. Expenses of witnesses.

6th. Processes to be drawn up correctly.

Further forms.

* v. para. 1581.

1709. In cases of failure to serve summons, the warrant to be issued under Act X. 1845* is to be drawn out in the form No. 54 of appendix A. For form of writ for attachment of property of persons absconded, see No. 55 of appendix A. C. O. Nos. 205 and 232½ of vol. 3. And for form of warrant upon report of a police officer or upon credible information, see No. 55½ of appendix A. C. O. No. 24 of vol. 4.

(a) It was decided in the case of *Lang versus Gubbins* (1851), that bail taken under this provision cannot be declared forfeited by any other authority than a judge of the supreme court.

1710. If these circulars do not provide an appropriate form for any legal process, the magistrate should suggest one for the court's sanction. The object of the circulars is that all courts may send the like form for each process to be submitted to a judge of the supreme court under Act XXIII. 1840 ; and that the judges of that court may have a certain and authentic means of knowing what processes and forms are legal and regular under the law in the mofussil. Letter of Nizamut Adawlut to Magistrate of 24 Pergunnahs No. 1415, October 6, 1852.

Magistrate may suggest other forms.

1711. As there is no provision in sect. 2, Act XVI. 1850 for distraining and selling the goods of an offender in another jurisdiction, so application cannot be made to the supreme court to give effect to process of distraint and sale issued in accordance therewith. Letter of Nizamut Adawlut to Magistrate of 24 Pergunnahs No. 1415, October 6, 1852.

Where law does not provide for execution in other jurisdiction, no application can be made to supreme court.

1712. A strict compliance with the terms and requirements of Act XXIII. 1840 is enjoined on all magisterial functionaries. C. O. No. 49 of vol. 4.

Strict attention required to these

1713. Whenever a magistrate has occasion to apply for the apprehension of an individual in Calcutta, he is invariably to depute an officer of his own court for the purpose of identifying and receiving charge of such person, and of undertaking the responsibility of securing his appearance at the station of the magistrate, without exposing such individual to the hardship of unnecessary detention at the presidency. C. O. No. 40 of vol. 2, and No. 49 of vol. 4.

In the case of

arrested.

SECTION IX.

OF AID TO BE GIVEN TO PROCESS OF SUPREME COURT.

1714. When a sheriff's officer, entrusted with the execution of a writ of capias issued by the supreme court against parties residing in the mofussil, has occasion to call upon the magistrate for assistance, the magistrate ought to render it : but such assistance must be confined to the legal execution of the writ ; as for instance the police officers furnished by the magistrate ought not to aid the bailiff in breaking into a house (though they accompany him if he enters the premises without breaking in) ; but they ought to prevent any breach of the peace when the arrest is made, or rescue after it has been made. In regard to the question how far the magistrate is required to assist the sheriff's officer in conveying a prisoner to Calcutta, it seems that he must be guided by the peculiar circumstances of the case ; *i. e.* he *may*, without incurring any legal responsibility, take such measures as are necessary to insure the peaceable execution of the process within the limits of his jurisdiction : but the bailiff is equally empowered, after the arrest, to take steps before the nearest justice of peace to have the prisoner bound over to keep the peace towards him, or to hire a sufficient number of persons to prevent his escape. *Opinion of the Advocate General* in C. O. Nos. 231 and 232 of vol. 3.

How far a magistrate is bound to assist a sheriff's officer in the execution of a writ of capias ; and in conveyance of

Execution of decrees not to be aided without writ.

Tenants are not to be dispossessed to

A magistrate directed not to forcible aid

pos- who held under a decree of a competent provincial court.

Remarks of chief justice of supreme court in regard to assistance to be given in the execution of writs of that court.

1715. The civil courts are not to interfere with the execution of the decrees of the supreme court, unless a writ directing execution is issued by that court. Const. No. 567.

1716. Magistrates, and other public officers, are bound to give all the assistance in their power to the enforcement of a writ of the supreme court; but they have no power to remove tenants having tenures and rights, of which by the law they cannot be deprived by a mere change of proprietor. C. O. S. D. A. No. 31, May 20, 1831.

1717. In execution of a decree of the supreme court in favor of A, founded on a deed of mortgage executed by B, the magistrate was considered to have acted judiciously in refusing to use forcible means to oust a third party from property in their possession, which they held under a decree of the provincial court founded on a deed of agreement executed by B; and he was directed to confine his aid and assistance to the sheriff's bailiff to preventing any breach of the peace in the execution of his duty, leaving the mortgagee to sue the third party in the zillah court. Const. No. 800.

1718. The following remarks were made by Sir L. Peel C. J. in his judgment in the case of *Andrew versus Lyon*, on the 8th July 1853, and were circulated by order of government. "The jurisdiction of this court is declared as to persons. No native occupying lands in the mofussil is subject to the jurisdiction of this court by reason of such occupancy. Unless he be an inhabitant of Calcutta, or unless a special character, which may attach to him by an act or contract of his own enuring to that effect, establishes his liability to jurisdiction, he is free from it; consequently this court has no jurisdiction, in the former case, to try that native's title to the occupation of lands, or to dispossess him of them. But if a person who is subject to the jurisdiction of this court occupy lands in the mofussil, or is landlord to those that do, then his title in the one case to occupancy, in the other to the landlord's or zumeendaree title, may be tried in this court between the claimant of them and himself. Any one may be the plaintiff, though the jurisdiction is limited as to defendants. Consequently if a British subject, or other person subject to the jurisdiction of this court were a ryot, or occupier of lands in the mofussil, and one claimed those lands from him, and sued him by ejectment in this court, he could shew, if such were the case, that the lessor of the plaintiff (i. e. the claimant) had no real title even to the zumeendaree, and also that if he had, he, the defendant, had a right or estate, which entitled him to hold the possession as occupier, and therefore that the claimant was not entitled to the actual possession. It is the actual possession which is sought in ejectment, though of course delivery of that possession will vary with the nature of the thing sought,—in some cases it can be little more than nominal, as for instance if a public road were recovered in ejectment, or as if tithes in England were so recovered, for which, though an incorporeal right, ejectment lies by a provision of the legislature in early times. It often happens in England that the tenants are never meant to be disturbed, the possession is then given by attorney to the claimant; and often ejectments are brought with this express object; but in England the actual tenants or occupiers are subject to the jurisdiction of the court: here they often are not, consequently in those cases the practice in ejectment, which is a flexible form of action, a mere fiction in form for the more convenient trial of the right, is made conformable to the different state

of circumstances: the tenant is served with notice, that he may, if he thinks fit, defend the title against a new landlord; for he may not like the new as well as the old landlord; therefore for this reason only notice is given to him, not with any view to compulsory dispossession of him. Ordinarily he takes no part in the matter, but the landlord defends, or else the suit is not defended: if it is not defended, our rule requires a full affidavit of the liability of the occupier and the jurisdiction of this court: if that affidavit were falsely made, and that appeared, the execution of the writ would be at once suspended; and so far from resenting, we should be thankful to any one, whether in an official position or not, who pointed out to us the intended abuse of the Queen's court. The possession of the tenant is for many purposes considered in law as that of the landlord; and where the actual landlord does not defend, but is a British subject, or is otherwise subject to the jurisdiction of the court, then the rule of court is practically complied with by shewing his connexion with the property, and his liability to the court's jurisdiction. But in neither case, either of a defended ejectment, or where one is undefended and judgment goes by default, are the ryots to be dispossessed, or interfered with. But if one who is, or calls himself, a ryot, comes in and takes defence, then he may impeach the lessor of the plaintiff's or claimant's title, either as respects the zumeendaree or as respects his own occupation. He cannot be turned out of possession by this court, either directly or indirectly, on any grounds except those on which he might be dispossessed in a suit instituted against him in a mofussil court. The law is the same, for the law on which his rights are founded would be just as much respected here as in any other court. Consequently if the defendants in this ejectment stood on the rights of a ryot as to any parts of those lands, they had only to assert and prove them; and if they were such as enabled them to hold against the claimant, the claimant's title would have failed *pro tanto*. But they did not so; they took defence for the whole as landlords, and they failed as to that: they set up no right as tenants to a parcel of the lands, and did not even take defence in that character for any portion. If they had such title, it was their folly not to advance it; and if by error they had failed to insist upon it, and had applied to the court at any time before execution issued, the court had both the power and the wish to protect them from injury. The court has not the duty cast on it of executing its own writs. In any difficulty, if applied to,) it would assist the sheriff with its advice. The sheriff cannot in the mofussil raise the body of the people as it were to help him. The duty is enjoined by the charter on the persons there described; and if that duty were wilfully and causelessly withheld, that might be punished in due course of law; but if those to whom the sheriff applies for aid *bonâ fide* believe that they would really be in error and trespassers in helping him, that would excuse them; the mere command of the government would be no legal excuse, unless that were conveyed in writing by the governor general in council in the mode directed by the statute. In that case they would be obeying the law in giving their aid to the sheriff, in the other they would violate it. Thus if the law be observed it is impossible that the executive and judicial authorities in the land can actually be drawn into collision. We have no reason to suppose that the decision of this court on a legal point would be disregarded. Their errors of judgment can be set right on appeal.

The duty of one who is called on to aid a sheriff is also a plain one. If he thinks the sheriff is doing wrong, he should not, while that impression is on his mind, aid him: he should state his doubts and ask for information; if that be given, and he still doubts, he can readily get the advice of the law officers of the government, or ask the sheriff to apply to the court for directions; if his doubts are dissipated, then it is his duty to act. If in that case the government order him to desist, then he should respectfully ask the protection which the statute gives him of a legal order in the prescribed mode. Unless that course be taken, the court of course could listen to no suggestion, that a man is ordered by a higher power not to act according to law; for, it is to be observed, it must hold that to be the law which it has declared by a legal judgment to be so. We have little doubt that now the rights of the parties have been explained, the sheriff will receive assistance, if necessary, to put the plaintiff in possession of those premises, which were actually in the possession of the defendant, or his agents or servants. C. O. Sup. Pol. *L. P.* No. 9 of 1853.

SECTION X.

OF RESISTANCE AND EVASION OF PROCESS.

All persons concerned in resisting legal process are to be apprehended by the police;

1719. If any person resists or causes to be resisted the execution of any legal warrant or process, which the officers of the magistrate's court or the police officers attempt to serve;—or endeavours to rescue any person arrested or under the custody of any such officers;—the darogah is to cause such offenders, as well as persons concerned in the resistance or rescue to be apprehended and forwarded to the magistrate with a report of the circumstances of the case and the necessary evidence. In case of actual rescue or violent resistance the darogah is, if necessary, to call in the aid of the police of the adjacent thanas, who are to conform to such requisitions, provided they are conveyed in writing. Reg. XX. 1817, sect. 26, cl. 1.

and brought before

1720. If any person, amenable to the authority of the magistrates or police officers, resists or causes to be resisted any warrant, order, or other process of any magistrate or police officer, the magistrate of the zillah, in which such resistance has been made, on the same being charged on oath, is, if practicable, to cause the party accused to be apprehended, and brought before him to answer to the charge. If the party absconds or conceals himself, so that he cannot be apprehended, or if on any account he cannot be immediately apprehended, the magistrate is to cause a written proclamation (in the vernacular), requiring the party to appear to answer the charge against him within a fixed period, not less than one month, to be publicly read and proclaimed by beat of drum, and to be affixed in some conspicuous part of his cutcherry, as well as on the outer door of the house in which the party has usually dwelt, or some conspicuous place in the village in which he has generally resided. *Beng. and Ben. Reg. XI. 1796, sect. 2, cl. 1. Ced. Prov. Reg. III. 1804, sect. 2, cl. 1.*

1721. Before issuing such proclamations magistrates should satisfy themselves as to the existence of such proof against the party named in them as involves a strong presumption of his guilt. Government Order *W. P.* No. 2600, August 9, 1849.

Proof to be examined carefully.

1722. Commissioners are to take opportunities from time to time of examining and revising in communication with the magistrates the lists of proclaimed offenders in each district; striking out those persons against whom a sufficiency of proof does not exist, and making provision that the annulment of the proclamation be made known to the parties themselves and to their friends as well as to the police. Government Order *W. P.* No. 2600, August 9, 1849.

Lists of such offenders.

1723. Whenever a proclamation is issued through a police darogah, by order of a magistrate, requiring the attendance of any person, who has evaded or resisted the processes of the court, the darogah is, in the presence of two or more creditable persons not connected with the thana establishment, to cause such proclamation to be publicly read and promulgated by beat of drum, and affixed in the police thana, and on the outer door of the house which the party has usually inhabited, or some conspicuous place in the village in which he has generally resided. Reg. XX. 1817, sect. 26, cl. 11.

Mode in which police officers are to publish such proclamation;

1724. On the expiration of the period specified in the proclamation, if the offender does not appear to answer the charge alleged against him, the darogah is to certify to the magistrate the mode in which the proclamation has been issued, and the date, time, and place of promulgation, and is to send a sufficient number of witnesses to prove the due publication of the process. Reg. XX. 1817, sect. 26, cl. 12.

and, in case of non- to

1725. If the party so charged cannot be apprehended, and does not within the fixed period appear to answer the charge,—or, if he is apprehended or appears in pursuance of the proclamation, and after receiving his answer to the charge and hearing the evidence he adduces in his defence, it is proved to the satisfaction of the magistrate that he is guilty of the charge,—the magistrate is to pass judgment against him in the following manner. *Beng.* and *Ben.* Reg. XI. 1796, sect. 2, cl. 1. *Ced. Prov.* Reg. III. 1804, sect. 2, cl. 1.

After expiry of be present or not.

1726. If the offender is a zumeendar, talookdar, or other proprietor of land paying revenue directly to government; or the proprietor of altumgah, ayma, or other lands exempt from revenue; situated within the zillah or city in which the resistance was made, he is to declare such lands forfeited to government, and by a precept under his official seal and signature is immediately to give notice to the collector of the district, who on receipt thereof is to cause the lands in question to be attached on the part of government, and is to hold them in attachment till the receipt of a further precept from the magistrate to relinquish them, or of orders from government to be communicated to him as directed below. *Beng.* and *Ben.* Reg. XI. 1796, sect. 2, cl. 2. *Ced. Prov.* Reg. III. 1804, sect. 2, cl. 2.

If the offender be a landholder within the zillah, his lands are to be forfeited.

1727. It is incumbent on the collector to afford to the magistrate, upon a precept to that effect received from him, all the information that he may possess, or can procure, in order to assist the magistrate in identifying and specifying the lands or property, the attachment of which the magistrate may be desirous to order. This duty of the collector is therefore preliminary to

How the magis landed property.

the issue of an order for attachment by the magistrate, who on the receipt of all the necessary information would issue judicial directions on the subject. The duty of the collector upon the receipt of these directions would consist solely in taking possession of the lands or property specified by the magistrate, and managing them to the best advantage until further orders. The objections of third parties to the attachment of lands, of which the collector takes possession on the direction of the magistrate, should be preferred to the magistrate who has given the order for the attachment; from whose orders an appeal lies of course to the superior criminal courts. So also any resistance to the proceedings of the collector in taking possession of the property would be a resistance of the process of the magistrate and would be punishable by him. C. O. No. 112 of vol. 4. *L. P.*

Objections by third parties to be preferred to the magistrate.

Resistance to collector's proceedings punishable by magistrate.

If claims are referred to collectors.

1728. When a claim is preferred to property attached by a magistrate, either directly or through the collector, he is not required to direct its immediate release from attachment before examining the validity of the claim; but he should never attach without good *prima facie* grounds for believing the property to belong to the absentee. Letter of Nizamut Adawlut to the Judge of Bakirgunj No. 1247, September 3, 1852.

Collector cannot be expenses of attachment by lands.

1729. No authority is vested in a collector by law to sell, on account of expenses incurred in their management, shikmee tenures placed under attachment by a magistrate under Reg. XI. 1796. Letter of Nizamut Adawlut to Judge of Bakirgunj, No. 1247, September 3, 1852.

If the offender be a sudder farmer within the zillah, his lease is to be cancelled.

* *Sespara*. 1727.

1730. If the offender is a sudder farmer holding a farm from government within the zillah or city in which the resistance has been made, the judgment against him is to declare his lease cancelled; and the magistrate, by a precept under his official seal and signature, is immediately to give notice to the collector, who is to proceed as above.* *Beng. and Ben. Reg. XI. 1796, sect. 2, cl. 3.*

If he be a landholder or sudder farmer in any other zillah, the same provisions apply.

1731. If the person convicted of resisting or causing to be resisted the process of a magistrate or police officer, is a proprietor of land or a sudder farmer paying revenue to government in any zillah or city jurisdiction, not being that in which the offence has been committed, and it appears just and proper, on due consideration of the circumstances of the case, to extend the penalty of forfeiture, declared in the above provisions, to the whole or any part of such lands or farms, it is competent to the magistrate to adjudge the same, subject to the prescribed confirmation of the nizamut adawlut, and the final orders of the government. Reg. XX. 1817, sect. 26, cl. 3.

But such orders are not final until confirmed by the nizamut adawlut.

1732. The judgments passed by the magistrate under the preceding provisions are to be immediately reported, with a complete copy of the proceedings, to the nizamut adawlut; and are not to be considered final and conclusive, until the orders of that court are received under the following section. *Beng. and Ben. Reg. XI. 1796, sect. 2, cl. 5. Ced. Prov. Reg. III. 1804, sect. 2, cl. 6.*

The nizamut adawlut how to proceed on receipt of proceedings in

1733. The nizamut adawlut, on receipt of the proceedings, are to pass such order thereupon as they think proper, on due consideration of the evidence and all the circumstances of the case; and in all instances wherein the forfeiture of the offender's lands or lease appears to

them too severe a punishment for the offence, they are authorized to commute it for such fine to government as they think adequate, and order the attachment of the lands to be taken off on the payment thereof. The sentence of the nizamut adawlut is to be final in all cases of fine, and imprisonment; but in case they confirm the judgment of the magistrate for a forfeiture of the offender's land or lease, they are, previously to ordering such sentence to be carried into execution, to transmit their proceedings with those of the magistrate to government, who are finally to determine whether the sentence of forfeiture is to be put in force, or commuted to fine, or otherwise; and who, whenever they order the land or lease of the offender to be forfeited, are at the same time to cause the necessary instructions for the future disposal of the land to be sent to the collector. In case the magistrate's judgment of forfeiture is set aside, either by the nizamut adawlut or government, he is immediately on being informed thereof, and on receipt of the fine (if a fine is ordered), to issue a precept to the collector, requiring him to remove the attachment, and to cause a full and fair account to be rendered of all receipts and disbursements during the period of attachment. *Beng. and Ben. Reg. XI. 1796, sect. 3. Ced. Prov. Reg. III. 1804, sect. 3.*

The final order of forfeiture must be passed by government.

1734. If the offender is not a proprietor of land or sudder farmer paying revenue to government, as described above, the judgment against him is to declare him liable to the payment of such fine to government as appears proper upon a consideration of his rank and circumstances in life, and the offence of which he is convicted; and the magistrate is immediately to proceed to the attachment of any property appertaining to the offender for the recovery of the same, in the manner authorized by the regulations for the recovery of sums of money decreed by the civil courts. When the offender has been apprehended, and is not possessed of property adequate to the discharge of the fine adjudged against him, the magistrate may commute such fine to imprisonment. *Beng. and Ben. Reg. XI. 1796, sect. 2, cl. 4. Ced. Prov. Reg. III. 1804, sect. 2, cl. 4.*

If the offender be not or he is to be fined, by distraint;

or, in failure of fine, by imprisonment.

1735. In cases of resistance of process not attended with aggravating circumstances, wherein the magistrate judges it sufficient to inflict the punishment which he is authorized to inflict for petty offences under sect. 8, Reg. IX. 1793,* it is not necessary to transmit his proceedings for the consideration of the nizamut adawlut, but his judgment is to be executed without reference under the general rules in force regarding appeals and revision of cases. *Beng. and Ben. Reg. IX. 1801, sect. 5. Ced. Prov. Reg. III. 1804, sect. 2, cl. 5.*

In the magistrate may if he thinks it sufficient, pass the same sentence as in other petty offences.

* v. ¶ 703.

1736. But, in all instances of resistance to the process of a magistrate or police officer, wherein the magistrate is of opinion that a fine to government not exceeding 200 rupees, commutable if not paid to imprisonment not exceeding 6 months, is an adequate punishment for the offence, he is authorized to adjudge the same instead of a forfeiture of land or farm; and his judgment in such cases, as well as in all cases wherein a similar judgment is passed by him against persons not being proprietors of land or sudder farmers, is not referrible to the nizamut adawlut, but is final, unless altered or rescinded by the superior criminal courts under the general rules in force. *Reg. XX. 1817, sect. 26, cl. 5.*

But, in all cases the magistrate may, if he thinks it sufficient, pass sentence of fine commutable to imprisonment. And in all cases not including forfeiture of land or farm the judgment of the magistrate is final.

1737. If any person charged with an offence of a criminal nature absconds or conceals himself, so that upon a process issued against him by a magistrate or police officer he cannot

Any person charged with a criminal offence, ab-

or evad-
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ed by

be found, the magistrate is to cause a written proclamation (in the vernacular language) requiring the absent party to appear to answer the charge within a fixed period, not less

under which the police
officers are to
publish such pro-
clamation (v. paras.
1728 and 1724) ap-
ply equally here.

If he does not
his land or
within the
is to be at-

one month, to be publicly read and proclaimed by beat of drum; and is to cause such proclamation to be affixed in some conspicuous part of his cutcherry, as well as on the outer door of the house in which the party has usually dwelt, or some conspicuous place in the village in which he has generally resided.* In case the party does not appear and deliver himself up within the fixed period, the magistrate, on receiving the nazir's return to this effect, is to order the attachment of any land or other real property held by the absentee, within his jurisdiction, in the following manner. *Beng. and Ben. Reg. XI. 1796, sect. 4, cl. 1. Ced. Prov. Reg. III. 1804, sect. 4, cl. 1.*

Attachment how
to be made, if the
absentee is a land-
holder, or sudder
farmer;

* See para. 1727.

1738. If the absentee is a proprietor of land or sudder farmer paying revenue immediately to government, he is to issue a precept,* under his official seal and signature, to the collector of the district, requiring him to hold the land or farm of the absentee in attachment, till the receipt of further notice. And the collector is accordingly to obey such requisition, and to take such measures as are necessary for the due care and management of the lands while under his charge, subject to the instructions of the commissioner of revenue, to whom he is to make an immediate report of any instances of lands being delivered over to him under these provisions; he is also to relinquish such lands, on being advised by the magistrate that the attachment has been taken off on the attendance of the absentee; and is to cause a full and fair account to be rendered of all receipts and disbursements during the period of attachment. *Beng. and Ben. Reg. XI. 1796, sect. 4, cl. 2. Ced. Prov. Reg. III. 1804, sect. 4, cl. 2.*

and, if he is not
such, but a tenant
of landed property,
capable of attach-
ment,

* See para. 1727.

1739. If the absentee is not a proprietor or farmer of land paying revenue to government but, as a dependant talookdar, under farmer, or ryot, or in any other capacity whatever, is the tenant of landed property capable of attachment, the magistrate is to issue a precept to the collector of the district,* directing him to attach the same, and adopt the necessary measures for the due care and management of it while under his charge; paying from the product any rent which becomes due to the zumeendar or other person entitled thereto; and deducting all necessary expenses in the account to be rendered to the absentee, whenever he may attend and the attachment of his property is removed. *Beng. and Ben. Reg. XI. 1796, sect. 4, cl. 3. Ced. Prov. Reg. III. 1804, sect. 4, cl. 3.*

So, if he possess-
es land or other
immovable prop-
erty in any other
zillah.

1740. If a person charged with an offence of a criminal nature, who absconds or conceals himself, so that the process issued against him cannot be served, possesses land or other immovable property, or a sudder farm paying revenue to government, in any other zillah or city jurisdiction, than that wherein the offence charged against him has been committed, and it appears necessary to attach the same with a view to cause his attendance under the above provisions, it is competent to the magistrate to order the attachment of the whole or any part of such property or farm, and the above provisions are to be considered applicable in such cases. *Reg. XX. 1817, sect. 26, cl. 4.*

to be
in the
of the

1741. In all instances wherein an attachment of property is ordered under the foregoing rules, the magistrate, immediately on the attendance of the party for whose appearance it was

ordered, is to direct, by a written precept, that the attachment be removed, and that a full and fair account be rendered of all receipts and disbursements during the period of attachment. *Beng. and Ben. Reg. XI. 1796, sect. 5. Ced. Prov. Reg. III. 1804, sect. 4,*

1742. If the absentee appears to answer the charge within the six months mentioned above, the magistrate is not authorized to continue the attachment. *Const. No. 414.*

Attachment may not be after his absence.

1743. If the absentee neglects to attend for a period of six months after the lands have been ordered under attachment, the magistrate is to report the case to government, who is to pass such order upon it, and upon the future disposal of the lands, as may be deemed proper. *Beng. and Ben. Reg. XI. 1796, sect. 6. Ced. Prov. Reg. III. 1804, sect. 4, cl. 5.*

If the does within report to government.

1744. If any person amenable to the authority of the magistrates and police officers resists or causes to be resisted any warrant, summons, or other process of any authorized magistrate or police officer, and such person cannot be apprehended; or if any person charged with a criminal offence of a *heinous* nature absconds or conceals himself, so that, on a warrant issued against him at his usual place of residence by the local magistrate or police officer, he cannot be found; and the party so resisting or evading the process is not a proprietor or sudder farmer of land capable of attachment under the above provisions, but is in possession of any movable property, which can be attached, and the removal of which might be expected, if not placed under immediate attachment, the police officer, issuing or serving the warrant in such cases, is authorized on receipt of credible information, that the person against whom the warrant is issued has recently absconded, or concealed himself for the purpose of evading it, to cause the attachment* of any movable property belonging to such person within his jurisdiction, giving at the same time immediate information to the magistrate of the district; whose previous instructions are to be applied for, when there is [no] reason to expect a removal of the property. *Reg. XX. 1817, sect. 26, cl. 6.*

The movable property of persons resisting or evading process may be immediately attached, in case of suspicion of removal.

* For form of writ of attachment in such cases, see appendix A. No. 55.

1745. This provision applies only to criminal offences of a *heinous* nature; and magistrates are to abstain from attaching the personal property of an absconded defendant whenever the offence for which he is summoned is not of that character.(a) *C. O. Government Bengal, No. 3, September 8, 1853.*

Meaning of term, heinous offence.

1746. A riotous assault, when the offence is so limited, and unaccompanied by any aggravating feature of injury or otherwise, so as to make it of a serious nature, is not classifiable as a "heinous offence" under the regulations. *Government Order W. P. No. 627A, May 8, 1854.*

A mere riotous assault is not a heinous offence.

(a) With this order is circulated a letter from the superintendent and remembrancer of legal affairs in which it would seem that he confines the application of the term "heinous" to those offences enumerated in sect. 26, Reg. IX. 1807 and form No. 4, Reg. XX. 1817. But this interpretation is doubtful, since both the regulations quoted refer merely to periodical returns of crimes committed, and many heinous offences are not enumerated therein. The nature of the case must be judged by its peculiar characteristics. A list of heinous offences is given in sect. 21, Act VII. 1854, but it omits affrays and thefts, both of which must be classed as heinous offences. The following section however includes under that term any offence which in the judgment of government is serious or aggravated.

may
be a
offence.

1747. "Actual affray," without specification of its nature, is designated among heinous offences by cl. 1, sect. 13, Reg. XX. 1817; but the nature of the affray must be gathered from the subsequent provisions made regarding that offence and serious riots in section 18 of the same enactment. This is conformable to the classification of offences in the magistrate's criminal statements. Government Order *W. P.* No. 627 A, May 8, 1854.

Property so at-
tached is not to be
removed, until the
orders of the ma-
gistrate are re-
ceived.

1748. The magistrate, on receipt of the information directed in the above clause, is to determine whether the case is such as to require a continuance of the attachment, till the appearance of the accused person, or till a proclamation has been issued for his attendance under the above provisions; and is to transmit instructions to the police darogah accordingly, either for the release of the property attached by him, or for continuing the attachment, and taking an inventory of the property in conformity with the following clause. Till the receipt of such instructions the police officers are to adopt such measures only as are requisite to prevent a removal of the attached property. Reg. XX. 1817, sect. 26, cl. 7.

Inventory to be
taken of articles
and ac-
cused person
from parties re-
ceiving charge.

1749. On receipt of the magistrate's instructions for an attachment of moveable property, the darogah, in the presence of two or more respectable inhabitants of the place, is to cause an exact inventory of the articles attached to be taken and duly attested; after which he is to deliver the property in charge to the headman or any two or more respectable inhabitants of the place, taking an acknowledgment for the same, which is to be forwarded, together with an inventory of the property, to the magistrate. Reg. XX. 1817, sect. 26, cl. 8.

Such property is
to be carefully pre-
served, and a strict
account rendered
on the removal of
attachment.

1750. In all instances, where an attachment of property is made under the foregoing rule, the darogahs are to enjoin the persons, into whose charge the same is delivered, to take care that there is no injury done to the property; and if the person charged appears, within the period specified in the proclamation, the magistrate is immediately on the attendance of the party, to cause the attachment to be removed, and a full account rendered of the property attached, subject only to any unavoidable expense which has attended the attachment. Reg. XX. 1817, sect. 26, cl. 9.

Disposal of pro-
perty in the event
proclaimed
not appear-
case of
case of
evasion of process.

1751. If the proclaimed person does not appear within the period fixed by the proclamation, the attached property in cases of resistance of process is liable to public sale, by order of the magistrate, for the purpose of making good any fine imposed on the offender; or, should the attachment of movable property have taken place under an evasion of process, it is at the end of six months, supposing the absentee not to attend during that period, to be at the disposal of government, in common with any landed property attached under similar circumstances in pursuance of the regulations in force. Reg. XX. 1817, sect. 26, cl. 10.

Form of report
to government.

1752. Whenever a magistrate has occasion to report to government cases of evasion of criminal process, with a view to the sale of the property of the accused person, in accordance with the provisions of sect. 6, Reg. XI. 1796, and sect. 26, Reg. XX. 1817, he is to make his report in the subjoined form, without a transmitting letter, unless the case be of sufficient importance to require more detailed notice:

Statement of a defendant evading criminal process, and reported to government, under sect. 6, Reg. XI. 1796, and sect. 26, Reg. XX. 1817.

Name, occupation, and condition of life of absconded defendant.	Brief statement of the offence charged, and the circumstances connected with it.	Description of property attached.	Estimated value of property attached.	Date of attachment and proclamation, and other steps taken to secure attendance.
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C. O. Government Bengal, No. 3, September 8, 1853.

1753. Commissioners in the Western Provinces are to submit for each quarter, in one quarterly statement for all the districts in their division, all applications received from magistrates for the sale of the movable property of criminals who have evaded process. Govt. Order *W. P.* No. 1407A, August 8, 1854.

Commissioners *W. P.* are to report such cases quarterly.

1754. The above provisions are applicable only to persons *charged* with a crime, but not convicted. Thus, the property of a person, who absconded after sentence and pending appeal, was held not liable to forfeiture. Const. No. 1124.

The above provisions are not applicable to persons absconding after conviction.

1755. Persons apprehended on a charge of resistance of process under the above provisions, and who are not accused of any aggravating crime, in addition to the resistance of process, such as is declared not bailable by sect. 7, Reg. IX. 1793, or sect. 4, Reg. XVI. 1795,* are to be admitted to bail until a final decision has been passed upon the charge; provided the bail offered by them appears to the magistrate, or other public officer to whom the charge is preferred, sufficient for securing their appearance during the prescribed investigation of the case. *Beng. and Ben. Reg.* IX. 1801, sect. 4. *Ced. Prov. Reg.* III. 1804, sect. 5.

Bail is admissible in cases of resistance of process.

* *v. paras* : 1625 and 1626.

1756. A person on whom a summons has been issued to answer a charge of resistance of process, is at liberty to answer such charge through a vakeel without being obliged to appear in person,—as the object of a summons in such case is to give the summoned party an opportunity of defending himself against the charge, which is distinct from ordering his apprehension after conviction, in consequence of non-payment of fine, with a view to his imprisonment. Const. No. 1216.

Persons charged with resistance may appear by vakeel.

1757. When a process issued by a court of one zillah, and backed and aided by the court of another zillah, is resisted, it is considered as the resistance of the process of the court within whose jurisdiction it took place. Const. No. 1115.

Resistance of process of one court aided by another.

1758. Cases of resistance of process should not be punished as affrays, since that offence has its appropriate penalty. Const. No. 549.

Resistance is not punishable as an affray.

1759. As the course of procedure against persons evading the process of a criminal court is distinctly laid down in the above provisions, the magistrate's views of expediency

Evasion cannot be punished as a contempt of court.

cannot justify his deviating from that course, and punishing persons guilty of that offence as for a contempt of court. Const. No. 619.

Nor can a case of simple resistance be committed to the sessions.

1560. A charge of resistance of process is not a fit subject of commitment to the sessions court: the magistrate must proceed according to the above provisions. N. A. R. vol. 2, page 225.

Resistance of police is not justified by their neglect of the forms of law.

1761. Forcible resistance of the police is not justified by a disregard on the part of the darogah of the rules of sect. 27, Reg. XX. 1817 for assisting in cases of distraint. Reports L. P. 1855, part 1, page 754.

Precedents of

1762. Three prisoners were convicted of murder in assaulting and opposing a military party employed on the public service; and sentenced, the ringleader to suffer death, and the others as accomplices to imprisonment in transportation for life. N. A. R. vol. 1, page 56.

1763. A havildar and two sepoys, charged with rescuing two persons from the custody of the police and magistrate's officers, and acquitted—the havildar, because he acted under instructions from a person whom he deemed himself bound to obey; and the sepoys, because they acted in obedience to the orders of the havildar, their immediate superior officer. N. A. R. vol. 2, page 330.

to be kept up of persons absconded.

1764. The magistrate is to keep up and regularly revise, according to the form given in No. 2 of appendix B, a vernacular register of persons charged with or suspected of the commission of specific crimes of a heinous nature, who have eluded the pursuit of justice. A copy of this register is to be forwarded half yearly to the superintendent of police. Reg. III. 1812, sect. 9, cl. 1 and 2. C. O. No. 144 of vol. 3, para. 6.

Police officers are to assist persons required to produce offenders; and to take charge of them if required.

* See chapter "Of landholders" in Book II.

1765. If any zumeendar, farmer, local manager, or other person, to whom a magistrate has issued a warrant or order, in pursuance of Reg. III. 1812,* or any other regulation in force, for the apprehension of a person proclaimed or charged with or suspected of a crime, applies to a police officer for co-operation and support in the execution of it, the police officer is to afford every assistance in his power for the due enforcement of the process; and, if required so to do, in conformity with cl. 6, sect. 9, Reg. III. 1812, is to receive charge of the prisoner from the zumeendar, or other person, and is to grant a written acknowledgment, specifying the name of the prisoner and the date on which he was delivered into his charge; he is also without delay to forward the prisoner under safe custody to the magistrate. If the person named in the application made to the police officer is not apprehended, the particulars of the application and of the measures taken in consequence are to be recorded, for the information of the magistrate, in the thana diary prescribed by sect. 8 of this regulation. Reg. XX. 1817, sect. 26, cl. 13.

Police officers, wounding or killing offenders, are to be held guiltless.

1766. If a police officer entrusted with or assisting in the execution of any legal warrant for the apprehension of a person charged with murder, robbery, or other heinous crime, or pursuing a robber or murderer immediately after the commission of the crime, or resisting him in his attempt to perpetrate the crime, should wound or slay any offender in endeavouring to apprehend him, he is to be held guiltless of any criminal act. Reg. XX. 1817, sect. 26, cl. 14.

1767. A civil judge should himself dispose of all common cases of resistance of civil process; and make over to the magistrate those cases only, which have been attended with acts of violence amounting to a breach of the peace, simply sending the papers, without passing any opinion thereon, and requesting him to dispose of the case under the general regulations. In such case the appeal would lie, from the order of the magistrate, to the judge in his capacity of session judge. Const. Nos. 1033 and 1115.

Of civil court.

are a

1768. Resistance offered by a farmer to persons legally authorized to distrain his effects is a criminal act, and punishable by imprisonment, notwithstanding that the distress is levied in an irregular manner, as the farmer always has it in his power to gain redress by an application to a court of justice. In this case, the ringleader was sentenced to imprisonment for one year, and the others for six months. N. A. R. vol. 1, page 302.

Resistance to a process of distraint, illegally executed, is a criminal act.

1769. Certain prisoners convicted of being concerned in an affray, attended with slight wounding, in resistance to a fraudulent distraint, a burkundaz being present to keep the peace, were sentenced under all the circumstances of the case to six months' imprisonment, and a fine of 15 rupees in lieu of labor. N. A. R. vol. 6, page 49.

Case of resistance to fraudulent distraint.

1770. In the event of a legal arrest by a warrant issued from the civil court, and a forcible rescue from the custody of its officers, the magistrate is not empowered to order the police forcibly to enter the house wherein the person rescued is, and to apprehend and forward him to the civil court: in such case the civil court should proceed against the offender according to sect. 25, Reg. IV. 1793. Const. No. 765.

Magistrate can-

civil process.

1771. It is not competent to a civil judge in cases of resistance of the process of his court to call upon the magistrate to enforce his orders. Const. No. 1209.

Nor can judge require aid from magistrate.

1772. All police officers are to aid and support the execution of all process and orders issued by a collector or other officer exercising the powers of collector, engaged in making or revising a settlement, on the responsibility of the officer issuing or executing the same; and if any affray or breach of the peace occurs in consequence of any resistance or obstruction being made or attempted to be made to the legal process or order of a collector or other revenue officer, the parties resisting or obstructing such process or order are to be punishable for the affray or breach of the peace, and the revenue officers are not to be liable to any criminal prosecution on that account. Reg. VII. 1822, sect. 24, cl. 3.

Of collector.

Police are to aid

not be held
affray

1773. Under the above provision, a collector, or officer exercising the powers of collector, has no authority to issue any orders direct to the police officers to aid in the execution of his process, except in very emergent cases, which should also be immediately reported to the magistrate; but in ordinary cases, whenever the collector has reason to apprehend resistance of his process, he is to communicate his apprehensions to the police darogah, who is responsible for taking such precautionary measures as are in his opinion necessary to prevent a breach of the peace. Const. No. 1018.

to police
he is
them
hence
tance.

1774. It was held illegal in a thanadar to issue process on the mere requisition of an ameen, who reported by letter that certain persons were ripe for rebellion. N. A. R. vol. 2, page 225.

mere requisition of an ameen.

Cases of resis-

1775. Under the powers vested in them by Reg. VIII. 1831, collectors are competent to try all cases of resistance of their process of attachment connected with summary suits for rent, except where actual breaches of the peace occur, in which event the case must be tried by the magistrate. Const. No. 615.

SECTION XI.

OF REWARDS.

For the apprehension of offenders.

Applications to be made to officer appointed by government ;

who is the commissioner ;—but the magistrate may offer rewards up to 500 rupees.

Session judge cannot offer.

Particulars to be noted and forwarded with such application.

Officers not to exceed their powers.

Rewards are payable by the magistrate of the jurisdiction in which the offender is apprehended.

Payment to be made at once, and reported.

1776. All applications for permission to offer a reward for the apprehension of a known offender, or the discovery of unknown offenders in cases of magnitude, are to be made to such officer or officers as from time to time are empowered by the local governments to authorize the grant of rewards. Act XVI. 1843.

1777. Commissioners of circuit are authorized, under the above rule, to sanction rewards for such objects to the extent of 500 rupees. The magistrate may exercise his discretion in offering rewards up to that amount; but he is to report them immediately to the commissioner, who may ratify, amend, or annul such orders as he thinks fit. C. O. Sup. Pol. *L. P.* No. 24 of 1843. Govt. Order *W. P.* No. 1415A, August 10, 1854.

1778. A session judge has no power to direct the offer of a reward for the apprehension of an offender who has absconded. Reports *W. P.* 1856, part 1, page 243.

1779. In submitting such applications, magistrates are to forward copies of their proceedings, or such parts of them as are sufficient to show the grounds and evidence on which the person, for whose apprehension a reward is proposed, is considered to have been concerned in the commission of the offence. He is also to forward a descriptive roll containing the name of the person and of his father; his age; places of birth and residence; and a description of his person, as far as it can be obtained, particularly noticing any peculiarities of dialect, speech, gait, or vision. C. O. No. 147 of vol. 1. C. O. Sup. Pol. *L. P.* No. 2 of 1842.

1780. All officers are to be careful not to exceed the power vested in them as regards the offer of rewards for apprehension. C. O. No. 173 of vol. 2. *W. P.*

1781. All rewards for the apprehension of proclaimed offenders, which are sanctioned by the regulations, and promulgated under the seal and signature of a magistrate, or of the superintendent of police, are, if the offender be seized by officers of police or by other persons, payable on the delivery of the person proclaimed to the magistrate of the zillah in which the offender has been seized. Reg. XX. 1817, sect. 26, cl. 15.

1782. Rewards, after they have been sanctioned, are to be paid without delay, and without further reference to the superintendent of police; but the payment is to be notified, whether the reward was offered on the authority of the magistrate or of the superintendent of police. C. O. Sup. Pol. *L. P.* Nos. 3 and 5 of 1842.

1783. A half-yearly statement of rewards and contingent charges disbursed under the sanction of the superintendent of police is to be furnished by the magistrates in the form, No. 9 of appendix F. C. O. Sup. Pol. *L. P.* No. 6 of 1842. This statement is to be despatched within one month from the close of the previous half-year. All sums that may have been expended during the half-year, although previously sanctioned by the superintendent of police, are to be entered in the statement. No sums that have been sanctioned by government are to be entered : nor are sums of expenditure from the surplus ferry, or chokeedaree, funds to be included in it. C. O. Sup. Pol. *L. P.* No. 3 of 1848.

ment.

to be forwarded

1784. In cases wherein any meritorious service has been rendered by police officers or others in the apprehension or discovery of public offenders for whom no specific reward is payable to such persons, the session judge(*a*) on due consideration of the service rendered, the exertions made, and any expense incurred, in the performance of it, is authorized to direct the payment of such remuneration as is considered adequate, not exceeding the sum of 100 rupees for a sirdar, and 10 rupees for an accomplice. If a larger reward is deemed proper, a report of the case is to be made to the nizamat adawlut, who are authorized to direct the payment of any sum not exceeding 500 rupees : if in any case it appears proper to grant a higher reward or compensation than 500 rupees, the nizamat adawlut is to report the same for the consideration and orders of government. Reg. XVI. 1810, sect. 18.

For meritorious service.

Authority of session judge to grant rewards for meritorious services in the apprehension or discovery of offenders, and of the nizamat adawlut.

1785. The above provision is applicable to any meritorious service rendered in the discovery and apprehension of persons really notorious as robbers ; but is not to be considered applicable to persons coming under the vague description of "vagrants." C. O. No. 80 of vol. 1, para. 13.

The above is not applicable to vagrants.

1786. When a magistrate is of opinion that it is expedient to grant any reward to a police officer or other person for particularly meritorious conduct, or for any services rendered to the police, he is to state the circumstances with his sentiments to the superintendent of police, who may, if he deems it expedient, sanction such reward ; provided that the sanction of government is previously obtained, if the proposed sum exceeds 100 rupees. But this rule is not to be construed to preclude the courts of sessions and nizamat adawlut from the exercise of the powers vested in them by the above provisions, whenever, from any circumstances which appear in the progress of a trial, they consider it expedient to direct or recommend the payment of any reward. Reg. XVII. 1816, sect. 15.

Magistrate how to proceed when he considers any person of meritorious conduct ; and power of superintendent of police.

1787. The inspector of prisons in the Western Provinces is authorized to sanction rewards not exceeding Rs. 100 in each case to guards and other public officers for good conduct on the occurrence of breaches of jail discipline. Applications for the offer of larger rewards must be submitted for the sanction of government through the inspector of prisons with a detail of the circumstances. All applications for the offer of such rewards

Power of inspect-

(*a*) The original refers of course to courts of circuit ; but the same power has devolved successively on the commissioner of circuit, and the session judge. See para. 731. The text has been altered throughout accordingly ; but it is prominently noted in this place, because it was thought necessary to explain in a circular order the power of a session judge to grant rewards under the above provisions. See C. O. No. 121 of vol. 2, dated October 5, 1832.

should be forwarded by the magistrate to the inspector of prisons who will dispose of them according to the above instructions. Government Order *W. P.* No. 5481, November 13, 1848.

Economy inculcated.

1788. Magistrates are to regard economy in recommending rewards for meritorious conduct; and in any particular case a report should be previously made to the superintendent of police. C. O. Sup. Pol. *L. P.* No. 13 of 1842.

Police officers are entitled to no commission on recovery.

1789. Darogahs and other police officers are not entitled to a commission on the value of stolen or plundered property which they may recover. Act XXXI. 1852.

CHAPTER V.

OF APPEALS.

SECTION I.

OF APPEALS AND REVISION OF SENTENCES.

To whom appeal

From assistants not vested with special powers to magistrate within one month;

from magistrate

1790. From every sentence or order in criminal trials within the limitation prescribed by sections 8 and 9, Reg. IX. 1793 (*Ced. Prov.* sections 8 and 9, Reg. VI. 1803)(a) or in judicial proceedings other than criminal trials, passed by an assistant to a magistrate, or by a sudder ameen, or by a law officer, or by any other officer under a magistrate empowered to try criminal cases, there is permitted one appeal to the magistrate, joint magistrate, or officer exercising the powers of magistrate, within one month from the date of such sentence or order.—And from every sentence or order in criminal trials beyond such limitation(a), or in judicial proceedings other than criminal trials, passed by a magistrate, joint magistrate, assistant to a magistrate or other officer empowered to try criminal cases, vested with special powers, is permitted within one month as aforesaid one appeal to the session judge.—And from sentence or order passed in criminal trials by a session judge there is permitted within

(a) The limitations are: in petty offences, imprisonment for 15 days, or a fine of 50 rupees, unless the offender is a rendar, independent talookdar, or other actual proprietor of land paying an annual rent to government of more than 10,000 ; or a proprietor of ayma land paying a quit-rent to government exceeding 500 rupees per annum.

three months one appeal to the nizamat adawlut.—And except as provided in the next section of this Act the sentences or orders passed upon such appeals are final. Act XXXI. 1841, sect. 2. Such appeals are final.

1791. Every order of an assistant to a magistrate or other officer not vested with special powers, passed in a criminal trial or proceeding, awarding a higher punishment than that prescribed by the limitations above mentioned (*i. e.*, adjudging a penalty of fine *and* imprisonment agreeable to the provisions of sect. 20, Reg. IX. 1807,* or cl. 3, sect. 3, Reg. III. 1821†) is appealable to the session judge. C. O. Nos. 156 *L. P.* and 159 *W. P.* of vol. 3. EXPLANATIONS.
If order of officer not vested with special powers is beyond the limitations.
* v. ¶ 760.
† v. ¶ 815.

1792. Every sentence or order of an assistant or other officer vested with special powers, passed in a criminal trial or judicial proceeding, awarding a punishment within the limitations noted above, is appealable to the magistrate, joint magistrate, or officer exercising the powers of a magistrate. C. O. No. 210 of vol. 3. If order of officer vested with special powers is within the limitation.

1793. The law allows no appeal to the session judge from the sentence of a magistrate, joint magistrate, [or other officer exercising the full powers of a magistrate] awarding a punishment within the limitations prescribed above. C. O. No. 100 of vol. 3. If order of officer exercising full powers of magistrate is within the limitations.

1794. The magistrate is the authority to determine the character of the offence, and the measure of punishment deemed commensurate thereto; and consequently no appeal lies to the session judge when the magistrate treats a case as a petty offence, and passes sentence within the prescribed limitations, although a much more severe penalty might be inflicted under the regulations. Const. No. 1353. If rests with the magistrate to determine what offences should be punished within the limitations.

1795. The order of a magistrate inflicting a fine not exceeding 200 rupees, under the express condition specified in sect. 8, Reg. IX. 1793,* is not appealable; but it is incumbent on the magistrate, in passing an order for a fine of above 50 rupees under that enactment, to set forth that the person fined is in the condition mentioned; and, in the absence of any such declaration on the part of the magistrate, any order of his directing the payment of a fine above 50 rupees is *prima facie* appealable. Const. No. 1361. If the magistrate fines a person more than 50 rupees within the limitation to
it such.
* See note (a) in preceding page.

1796. The award of a fine under Act XVI. 1850 for the restitution of stolen or plundered property, being under the terms of the Act an additional punishment for the same offence, cannot be considered as a separate order from the sentence of fine or imprisonment. If therefore the two fines aggregate more than 50 rupees, the order must be considered to be beyond the limitation. Reports *L. P.* 1852 part 1, page 283. Fine under Act XVI. 1850 is not a separate order.

1797. All appeals from a joint magistrate, of whatever powers (whether dependant or independant), are appealable exclusively to the session judge. Const. No. 858 is therefore rescinded. Const. No. 1326. From all joint magistrates the appeal lies to the session judge.

1798. It is not competent to a session judge to interfere with any order passed by a magistrate, or joint magistrate, regarding the appointment, suspension, or removal of any ministerial or police officer, the revision of which has, by section 4 of this Act, been entrusted to the superintendent of police. Act XXIV. 1837, sect. 5. Judge cannot receive appeals from police or ministerial officers.

administration of police.

order passed by a magistrate to prevent persons going about at night after a fixed hour, is appealable to the session judge. Const. No. 1239. The appeal from an illegal order of a magistrate, requiring a zumeendar to provide a building for the residence of police officers stationed upon his estate, lies to the session judge. Const. No. 1247. [These constructions were ruled under the provisions of sect. 5, Act XXIV. 1837, which (by another construction, No. 1145) was declared to be in force in those districts in which the whole administration of criminal justice had been transferred under Act VII. 1835 from the commissioners to the session judge, whether a superintendent of police had been appointed or not. Under that section (as now under Act XXXI. 1841) all appeals from the orders passed by a magistrate in any judicial proceeding whatever were made cognizable by the session judge instead of the commissioner of circuit; and it is expressly enacted (by sect. 7) that nothing in Act XXXI. 1841, is to be held to alter or interfere with the powers and duties of a superintendent of police as laid down in Act XXIV. 1837, and other parts of the Bengal Code. So, it was ruled in Const. No. 1307, that appeals from the orders of a magistrate enforcing penalties, under cl. 5, sect. 10, Reg. XX. 1817, against landholders for not keeping up dâk establishments, lie to the session judge, and not to the superintendent of police. And so, it has been ruled more lately, since the enactment of Act XXXI. 1841, in C. O. No. 157 of vol. 3, that all orders passed by magistrates for the removal of obstructions and nuisances on thoroughfares, or for other conservancy purposes, under the provisions of Act XXI. 1841, are appealable to the session judges only. In fine, therefore, all orders passed by a magistrate in judicial proceedings (other than criminal trials) whether connected with matters of police, or otherwise, are appealable to the session judge, with certain exceptions; viz. it is not competent to a session judge to interfere with any order passed by a magistrate regarding the appointment, suspension, or removal of any ministerial or police officer, the revision of which is entrusted to the superintendent of police (see sect. 5, Act XXIV. 1837): and so, as the magistrate's acts in the management of ferries are subject to the control of the superintendent of police, it is not competent to a session judge to receive appeals in such matters. (Const. No. 1144).]

Nizamut Adawlut cannot receive appeals.

orders of superintendent of police.

1800. The decision of a session judge in appeal from the order of a magistrate, or joint magistrate, in any judicial proceeding other than a criminal trial; and also the orders of the superintendents of police in regard to the appointment, suspension, or removal of a ministerial or police officer of a magistrate, or joint magistrate, passed under the provisions of this Act respectively; are not open to revision by the nizamut adawlut. Act XXIV. 1837, sect. 6.

1801. The decision of the session judge in appeal from the order of a subordinate criminal court in any judicial proceeding other than a criminal trial is not open to revision by the nizamut adawlut; and in regard to such cases that court possesses no jurisdiction. The provisions of sect. 6, Act XXIV. 1837 are specific and imperative, and bar the interposition of the court; and sections 2 and 3, Act XXXI. 1841 are clearly declaratory of the finality of the session judge's orders in all judicial proceedings other than criminal trials. Such being the case the court cannot assume to itself jurisdiction on the ground that the

orders passed by a session judge are unwarranted or irregular.(a) Reports *L. P.* 1851, page 1453.

1802. The nizamut adawlut cannot interfere with the order of any subordinate criminal court, which does not regard a criminal trial. Reports *L. P.* 1852, part 1, page 679.

1803. In any jurisdiction, in which a superintendent of police has not been appointed under Act XXIV. 1837, cases of a miscellaneous nature, other than criminal trials, are not cognizable by the nizamut adawlut. In such miscellaneous cases an appeal lies from the magistrate to the commissioner of circuit in his capacity of superintendent of police, whose decisions are not open to revision otherwise than on a regular suit in a civil court. Provided, however, that this is not held to preclude the government from issuing any orders that they may see fit, consistently with the existing regulations, in any case that may be brought to their notice by the nizamut adawlut or otherwise. Reg. IX. 1831, sect. 3. Act XXIV. 1837, sect. 3.

In a jurisdiction to which the nizamut adawlut has not been appointed, the court cannot take cognizance of miscellaneous cases.

Government may pass any orders in any case.

1804. The interference of the nizamut adawlut in such jurisdiction is restricted by the above to "criminal trials," i. e., cases involving a judicial investigation on a criminal charge and a judicial award. In all other cases which are contradistinguished as "miscellaneous cases," the appellate authority is transferred to the commissioner of circuit, with a reservation of a further appeal to the government in those cases, in which the party deeming himself aggrieved may prefer that course, instead of resorting immediately to the civil courts, [as in cases of dispossession or other actionable cause], or in which the nature of the case will not admit of the remedy by civil action [as in the case of alleged injustice towards native officers of government by magistrates or others to whom they are subordinate]. For the former the ordinary remedy by suit is provided; for the latter an appeal to government. Const. Nos. 914 and 662.

Definition of criminal trials and miscellaneous cases in the above.

1805. The appeal from the order of one magistrate, attaching lands in his district on the requisition of another magistrate, lies to the session judge to whom the former is subordinate. Const. No. 625.

Jurisdiction.

1806. Under orders of government, deputy magistrates, as well as uncovenanted judges exercising magisterial powers, are not to exercise appellate authority; and petitions of appeal whether from covenanted or uncovenanted subordinates are not to be referred to them for decision. C. O. No. 22 of vol. 4, *L. P.*

Appeals do not lie, and are not to be referred for decision, to deputy magistrates or uncovenanted judges.

1807. As every convicted offender has, under the above enactment, the privilege of demanding a re-hearing of his case, or in other words a second trial, so the mere reception of a petition cannot be considered equivalent to the "appeal permitted" by the Act; but it is incumbent on the appellate authorities to call for, and examine the proceedings of the lower courts in every case, whether it be a criminal trial, or a judicial proceeding other than a criminal trial, from the sentence or final order in which an appeal is preferred to them. C. O. No. 165 of vol. 3, *W. P.*

General rules.

Appeal cannot be decided without calling for and examining the proceedings.

(a) In this case the power of the court under the appeal law is fully argued.

month. 1808. Under the above provisions appeals are not admissible unless preferred within one month from the date of sentence or order : in this respect the law leaves no discretion. Const. No. 1332.

Rule for calculating the period.

1809. The month, within which the appeal must be lodged, is to be reckoned, exclusive of the day on which the order was passed, according to the English calendar, that is to say, it should not be invariably reckoned at 30 days. C. O. No. 158 of vol. 3.

Copy of order not requisite in nizamut appeals.

1810. In calculating the period of appeals, the time during which stamped paper remains in the lower court for the purpose of procuring a copy of its decision is not deducted. A nizamut appeal can be presented without copy of the decision of the lower court. Reports *L. P.* 1852, part 2, page 493.

Petitions for-
dāk
e attend-
ed to.

1811. Although a session judge is at liberty to call for the proceedings of a magistrate in any case, from whatever source his information has been derived, whenever such measure appears to him necessary for the ends of justice, yet a party is not entitled to have his petition of appeal attended to unless presented by himself in person, or by his representative duly authorized. Const. No. 513.

Appeal cannot be heard as of right if beyond time.

1812. The nizamut adawlut will not receive petitions of appeal forwarded by dawk ; and will not entertain the appeal unless the petition be presented within 3 months from the date of sentence. Reports *L. P.* 1852, part 1, page 840.

But petitions of appeal are to be received by officers against their own orders for transmission to the appellate authorities.

1813. Magisterial authorities, and particularly those of out-stations, are to receive petitions of appeal against their sentences and orders for transmission to the session judge, if presented within the period of appeal ; and session judges are to pass orders on such petitions, notwithstanding the appellant has not entered appearance by himself or through an accredited mokhtar at the court. C. O. No. 137 of vol. 3, *L. P.* No. 104 of vol. 4, *W. P.*

Judge what to note in margin of letter transmitting such appeals.

1814. The same rule is applicable to petitions of appeal from the sentences and orders of the session judges, presented to them for transmission to the nizamut adawlut, provided the petitions be duly presented within the prescribed period of three months ; and in such case the judge is to transmit the records of commitment and trial in original without taking copies of them. In the margins of letters transmitting the proceedings are to be entered the dates of the sentences appealed from and of presentation of the petitions ; the names of all the prisoners in the case, from the sentence in which one or more prisoners may have appealed, distinguishing those who have appealed from the others ; and also a copy of the sentence as entered in col. 12 of statement No. 6. C. O. Nos. 137 and 172 of vol. 3, *L. P.* No. 26 of vol. 4. *L. P.* No. 13, January 12, 1855, *L. P.*

This does not refer to miscellaneous appeals.

1815. These rules refer exclusively, as regards session judges to petitions of appeal from sentences on trials held at the sessions, and not to miscellaneous appeals. Letter of N. A. to Judge of Jessore, No. 1074, September 21, 1848.

Transmission of the record of an appeal case is on no account to be delayed.

1816. When a judge detained the record of a case in which an appeal was presented on account of the commitment and trial of another party for the same offence,—the court held that the transmission of an appealed record ought on no account to be delayed ; copies may be made of any papers necessary for a second trial, or that trial may for a time be postponed. A

prisoner under sentence is entitled to the earliest possible hearing of his appeal. Reports *L. P.* 1853, part 1, page 882.

1817. During the absence of the session judge of Nuddea from his station on circuit duty, the nizamat adawlut, on petition, directed the magistrate to stay execution of his award, passed under Act IV. 1840, until the return of the session judge should enable the petitioner to prefer his appeal as allowed by law. *Sevestre's Reports*, vol. 2, page 153.

In a particular case, the nizamat adawlut received an appeal from an order of a magistrate.

1818. It is not required by any law that an appeal from the order of a magistrate should be accompanied by a copy of the proceeding or decision appealed from. Const. No. 1081.

Petition of appeal need not be accompanied by a copy of order.

1819. It is not incumbent on the appellate authorities to furnish the lower courts with copies of the petitions of appeal presented against their proceedings; and on some occasions substantial reasons may exist for withholding them. *N. A. R.* vol. 2, page 221.

Appellate authorities need not furnish the lower courts with copies of petitions of appeal.

1820. The words "sentence or order" in Act XXXI. 1841 do not refer to interlocutory orders in cases under trial; and the provisions of the Act do not preclude the interference of the higher with such intermediate orders of the lower courts. Const. No. 1322.

Interlocutory orders.

1821. Session judges are competent to exercise interference in regular criminal trials in the course of their investigation before the lower courts, and to take cognizance of appeals from interlocutory orders passed by those courts in such cases, not having reference to matters of police: and it is absolutely necessary that they should have such authority to enable them to maintain an efficient superintendence and control over the whole of the proceedings of the lower courts in regular criminal trials. *C. O.* No. 226 of vol. 2.

General power of session judge to interfere in the course of trial by magistrate and to take up appeals from interlocutory orders.

1822. As a magistrate's order in cases of trespass, or the like, may include the infliction of a fine of 50 rupees, not appealable under the above provisions, as well as an award of possession of the thing in dispute, which is appealable to the superior court; distinct and separate orders are to be passed in such cases, that in which the magistrate's decision is final being kept apart from any order appealable to the sessions court. *C. O.* No. 135 of vol. 3. But the former order does not become appealable from being coupled with the latter in one proceeding. Reports *L. P.* 1855, part 1, page 641.

Two orders in one case, one appealable, the other not, are to be kept distinct and separate.

1823. Supposing a party to appeal, the amount of whose punishment clearly gives him that right, the session judge cannot interfere with another sentence in the same case, which falls within the limitations prescribed. And if a party, having an undoubted right to appeal, fails or neglects to do so, another party in the same case, whose punishment falls within the limitations specified, cannot be permitted to appeal. Const. No. 1330.

In such case the judge, though he annuls the former, cannot interfere with the latter.

1824. It is a rule of practice with the court of nizamat adawlut in the Western provinces, not to receive petitions from third parties, calling themselves relations of the prisoners, without authority from the real appellants. No appeal therefore is considered admissible, unless presented by the appellant in person, or by a duly authorized representative. *C. O.* No. 166 of vol. 3. *W. P.*

The court will not receive petitions of appeal from third parties.

1825. The magistrate may compel the personal appearance of a defendant to receive sentence on conviction although he has permitted such defendant to appear by mokhtar during the trial. In such case the defendant cannot appeal from the conviction as long as he

The right of appeal is barred during evasion of

evades the order for his apprehension : and the appellate court cannot suspend the execution of that order pending a revision of the case. C. O. No. 3, May 12 ; *L. P.* and No. 874, July 15 ; *W. P.* 1854. This rescinds Const. No. 941.

Judge may quash conviction, and order commitment,

1826. A session judge in appeal is competent to quash any conviction by a magistrate in a case beyond his legal jurisdiction, and to point out that commitment is, in respect to it, the proper course of procedure. Reports *L. P.* 1852, part 2, page 793.

if the case be beyond the competency of the magistrate ;

1827. The session judge cannot quash a conviction, and direct the commitment of the prisoners, in a case which lies within the competency of a magistrate, and in which therefore commitment is not imperative ;—Letter of Nizamut Adawlut to Judge of Rajshahye, No. 641, June 11, 1843. Reports *L. P.* 1856, part 1, page 873.—even though he would direct commitment on a different charge. Reports *W. P.* 1854, part 1, page 542.

and may order re-apprehension and commitment in case beyond competency of magistrate.

1828. A session judge can direct the re-apprehension and commitment of a person, whom the magistrate has released from the charge ;—Reports *W. P.* 1855, part 1, page 623 ;—if the magistrate is not competent to decide the case of his own authority. See para. 971.

If judge quashes the order of a magistrate, and directs him to pass a fresh order, the

1829. When the session judge in appeal from the order of the magistrate quashed a conviction of theft on the ground that the facts of the case did not show that the offence of theft had been committed, and directed the magistrate to pass proper orders ; and the magistrate on a re-perusal of the papers upheld his former order ; the court held that it was not competent to the magistrate to disregard the legal opinion of his superior officer, and to punish the prisoners, in reference to the same admitted facts, upon his own opinion that the offence was properly to be considered as theft. The magistrate, if differing from the session judge on the point of law, ought to have acted according to the provisions of Reg. X. 1796, and to have requested a reference to the sudder court in the manner there laid down. Reports *L. P.* 1853, part 1, page 728.

the sudder court.

may order magistrate to admit a prisoner to bail pending appeal ;

1830. A session judge is at all times competent to direct a magistrate to suspend execution of his order, and to admit a prisoner to bail until a final order has been passed in the case, when justice appears to require the measure, whether he has or has not examined the proceedings on which the order is founded. Const. Nos. 489, and 657.

but such practice is highly objectionable.

1831. But the practice of placing convicts on security pending appeal, is most objectionable, and should not be adopted except on *prima facie* evidence of their innocence, and even then but rarely. Resolution Nizamut Adawlut *L. P.* No. 710, July 13, 1850.

Judge may admit a party to plead by vakeel ;

1832. A session judge may direct a magistrate to admit a party to appear and answer by attorney, if he see sufficient reason, without calling for the proceedings. Const. No. 730.

and may replace on the file a case struck off on default.

1833. It is competent to the session judge, on sufficient grounds, to order the magistrate to replace on his file a case dismissed by him on default, or struck off without investigation of the merits in consequence of the plaintiff failing to attend or neglecting to prosecute his complaint. Const. No. 1169.

Appellate authorities ought not to with

1834. A session judge should not communicate by letter with a party appealing from the order of a magistrate, nor furnish him with copies of the magistrate's explanations: he

should require the appellant to make his application on stamped paper; and, after calling on the magistrate for any explanation of his proceedings which appear necessary, proceed to determine the question at issue; leaving the appellant to apply in the usual manner for copies of any papers he may wish to have. Const. No. 818.

appellants by letter.

1835. The session judge may exercise the same power in punishing malicious, vexatious, or groundless appeals, as is vested in the magistrates* in regard to complaints of that nature. Const. No. 530.

Power to punish malicious, &c. appeals.

* n. paras. 387 et seq.

1836. A merely litigious appeal is not punishable; but if a prosecutor, whose case has been dismissed, persists in bringing before the appellate authority a charge evidently malicious or greatly exaggerated, it is competent to the latter to punish him as for such complaint. Const. No. 1208.

Merely litigious appeal is not punishable.

1837. Appellants from the decisions of magistrates are at liberty to employ whom they please to conduct their appeals. But agents so employed should secure their remuneration before undertaking the business, and should be given to understand that no assistance to enforce payment of it afterwards will be given. Const. No. 642.

Appellants may employ any one to conduct their appeals.

1838. A sudder ameen is not entitled to appeal from the decision of a magistrate in a case originally decided by the former, the right of appeal possessed by the dissatisfied party being sufficient for the ends of justice. Const. No. 1185.

Officers cannot appeal from orders reversing their decisions.

1839. Explanations are to be given, in the periodical statements, of all appeals which at the close of the month or year have been pending above three months. C. O. No. 209 of vol. 2.

Explanations of appeals pending above 3 months.

1840. When a session judge considers a conviction *bad in law*, he is not bound to go into all the facts and arguments referred to in the judgment of the magistrate. It is enough that he refers to, and decides on, what seems to him the governing point or points of a case. But *as to these*, he should fully notice all reasonings which the magistrate may have used. Letter from Nizamut Adawlut to Judge of 24 Pergunnahs, No. 378, April 14, 1853.

The appellate court should explain the reasons on which it sets aside a finding on the material points of a case.

1841. It is at all times lawful for the courts of nizamut adawlut to call for the records of any criminal trials of any subordinate court, and to pass upon them such orders as may seem fit. (a) Act XXXI. 1841, sect. 3.

Revision of cases.

1842. But it is not lawful for the court of nizamut adawlut in cases so called for, or for any criminal court in appeals preferred to it, to enhance the punishment awarded, or to punish any person acquitted by the court below. Act XXXI. 1841, sect. 4.

ment on appeal.

1843. Whenever it appears to a session judge, from the returns furnished to him by the magistrate, that any case has not been sufficiently investigated, and that a further enquiry is practicable and requisite for the ends of justice, he is in the first instance to direct such additional enquiry to be made by the magistrate. Reg. IX. 1807, sect. 22.

If case is not sufficiently investigated, judge may order further inquiry;

(a) The power of the nizamut adawlut to call for and revise trials is given more at large in page 262, paras. 1438

and he may at the same time reverse the order of the magistrate.

1844. There is nothing illegal in an order of the judge reversing that of the magistrate, and directing him to make further enquiry and to re-try the case *de novo*. Resolution N. A. August 11, 1854.

But such inquiry must be conducted by magistrate.

1845. The existing regulations give no power to a session judge to receive evidence, which has not been previously heard before the lower court, except in such cases as have been regularly committed to him for trial at the sessions. Any further enquiry, therefore, which he considers requisite under the above provisions, is to be instituted by the magistrate who is to communicate the result thereof to the session judge. Const. Nos. 1104, and 1169.

Sudder court can call for further evidence.

1846. In cases appealed to the nizamut adawlut, the court can always call for further evidence. Reports *L. P.* 1852, part 2, page 383.

Judge may call for proceedings of pending trial, and instruct the magistrate to bring it to a conclusion ;

1847. On inspection of the periodical returns furnished by the magistrate of cases pending, the session judge is to call for the magistrate's proceedings in any case that may appear to require it; and if, on perusal of them, he is of opinion that there is not sufficient reason for postponing the trial, he is empowered to instruct him to close his proceedings; and either to pass a final order if the case is determinable by the magistrate; or to bring it before the sessions, if there appear to be sufficient grounds for committing the prisoner to stand his trial. Reg. VI. 1818, sect. 2, cl. 1.

but in such case he is to pay attention to the reasons assigned by magistrate for delay.

1848. In exercising the power vested in them by the above clause for the purpose of preventing the long confinement of prisoners charged with criminal offences during the magistrate's investigation, without strong and sufficient cause for their detention, the session judges are required to give due attention to the reasons assigned by the magistrate for not passing a final order respecting the prisoners in each instance, and to be careful that their instructions to the magistrate in such cases are consistent with the objects of public justice, as well as with a just and humane consideration of the prisoner's actual condition, and the period of his confinement. Reg. VI. 1818, sect. 2, cl. 2.

Judge and magistrate may call for cases of subordinate courts, but alter any

concerned ;

1849. It is at all times lawful for a session judge and for a magistrate, joint magistrate, or officer exercising the powers of magistrate, to call for and examine the records of any court immediately subordinate to their respective courts, for the purpose of satisfying themselves as to the regularity of the proceedings of such subordinate courts: but it is not lawful for any court under the degree of the nizamut adawlut to alter any sentence or order of any subordinate court, except upon appeal by parties concerned duly made according to the provisions of this Act. Act XXXI. 1841, sect. 5.

nor direct release of persons who have not appealed.

1850. The appellate court cannot direct the release of prisoners, who have not appealed, whether before or after their conviction. Reports *L. P.* 1855, part 2, page 725.

Duty of judge and magistrate under the above rule.

1851. Under the above provision, it is the duty of the session judge and magistrate to report any cases, the circumstances of which, on revision, suggest the propriety of interference, to the nizamut adawlut, in order that that court may proceed respecting them as appears proper. Such reports are always to be accompanied by the record of the case, to which the reference relates, and by an English letter commencing "Under section 5, Act XXXI. 1841, and circular order of the nizamut adawlut, dated 18th March 1842, I herewith transmit the record of the case, noted in the margin, to be laid before the nizamut adawlut,

Mode of reference to the nizamut adawlut.

with the following report." Hereafter is to follow a concise account of the irregularity or other matter on which the interference of the court is sought. The magisterial authorities are to send these reports, for submission to the court, through the office of the session judge to whom they are subordinate. The court did not think it necessary to define what descriptions of grave irregularity of procedure, undue severity of punishment, &c., would call for reports of this nature; but enjoined on all officers the exercise of a sound discretion in making such references, so that neither important errors and omissions may escape correction, nor the time of the court be needlessly engrossed by matters not demanding their interference. C. O. No. 106 of vol. 3.

Magistrate to submit cases through judge.

1852. Whenever a judge has occasion to forward a report under the preceding paragraph, together with the record of a case, for the orders of the court, he is in the first instance to communicate a copy of his intended report to the magistrate, or other officer, whose order he wishes to bring under the court's notice, with a view to that officer submitting such explanation of the nature and grounds of his proceeding as he may think proper to offer. On receipt of this explanation, if the judge continues to think it necessary that the case should be laid before the court, he is then to attach the explanation of the magistrate, or other officer, to his report, with any remarks in regard to it which may seem to him to be material. C. O. No. 65 of vol. 4.

In such cases judge is to call on magistrate for explanation.

1853. But a difference of opinion as to the guilt or innocence of a prisoner is no ground for a reference under the Act, especially when the prisoner has not availed himself of his right to appeal. Reports *L. P.* 1855, part 2, pages 190 and 731.

innocence of prisoner, no ground of reference to sudder court.

1854. And a reference cannot be made with a view to the enhancement of punishment. Reports *L. P.* 1855, part 2, page 1005.

Reference cannot be made to enhance punishment.

1855. Although no person has a right of appeal to the session judge after the expiration of one month from the date of the magistrate's order, yet the judge is not only competent but it is his duty to send for any case, in which he may see reason to presume a failure of justice, though no appeal has been preferred to him, and without any reference to the source from whence his information is derived. Const. Nos. 437 and 986.

Higher courts

1856. The period of appeal is limited merely as it relates to appellants without restricting the discretionary authority of supervision possessed by the superior courts. N. A. R. vol. 2, page 221.

or to the time which has elapsed.

1857. In ordinary cases when an appeal is lodged against an act of a magistrate, the session judge should confine himself to calling for the proceedings in the case, or for a vernacular kyfeeyut or report if such appears necessary; but in special cases he is fully competent, in his capacity of general control, to require a report in English on any particular points, which appear to call for explanation, especially in regard to any irregularities or other defects apparent in the magistrate's proceedings. Const. No. 1071.

ju
trate.

1858. The magistrate is to comply with any application from the session judge to inspect the English correspondence of his office, whether with reference to any particular foudaree case pending before him, or for the general purpose of acquainting himself with all

trate's

official matters connected with the welfare and management of the district. C. O. No. 5 of vol. 2.

1859. Officers forwarding explanations of their subordinates, are invariably to state whether they consider the same to be sufficient and satisfactory or otherwise. C. O. No. 219 of vol. 2.

No appeal to
privy council.

1860. There is no law which authorizes the admission of an appeal to the privy council from the sentence of the nizamat adawlut. N. A. R. vol. 6, page 94.

SECTION II.

OF DIFFERENCE OF OPINION BETWEEN JUDGE AND MAGISTRATE.

thinks an order of
the session judge
unwarranted by or
regulations.

1861. Whenever it appears to a magistrate that a precept issued to him by a session judge is contrary to, or unwarranted by the existing regulations, he is authorized to state to the judge in what respects he considers his precept to be in deviation from the regulations and to suspend execution till receipt of a second precept in reply to his objections. the second precept of the session judge, in reply to such objections, confirms his first in whole or in part, and requires the magistrate to execute the same without further delay, he is immediately to comply with such requisition. In case, however, the magistrate does not satisfy the magistrate that the regulations have been rightly construed by the session judge, he is at liberty at the same time that he certifies the execution of the order to the session judge to transmit copies of the precepts, and his returns thereto, with such other papers as are necessary for the information of the circumstances of the case, to the nizamat adawlut; and the judge is accordingly to transmit such papers, as requested, without unnecessary delay. Provided, nevertheless, that this is not to be understood to authorize any magistrate to question the propriety of

But these rules
do not apply to
the regulations;

and do not au-
the magis-
offer ob-
to a final
order.

eventually to the nizamat adawlut, meant to be authorized by this to cases in which the sense of the regulations, from a difference of construction appears doubtful and uncertain. *Beng. and Ben. Reg. X. 1796, sect. 2. Reg. XXII. 1803, sect. 2.*

1862. A magistrate is competent, under the above provisions, to the nizamat adawlut, when he deems any order passed by a magistrate to be repugnant to the regulations; but he is not

ion of an an-
peal.

that

1863. A magistrate cannot demand a reference to the nizamat

authorized by the regulations, as by so doing he would place himself in the light of an advocate of one of the parties. Const. No. 536.

1864. A magistrate referred a case to the nizamat adawlut, in which the court of circuit released certain prisoners on the ground that the evidence was in their judgment insufficient for conviction; but was informed that his reference was not agreeable to the intent of the above provisions, inasmuch as it was clearly competent to that court to annul his order on such ground, and that the judges were therefore authorized to decline forwarding the reference. Const. No. 433.

to forward
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ment.

1865. A magistrate was informed that his neglect to obey the order of the session judge, until it had been repeated three times, was irregular and unwarranted by the above or any other regulation. Const. No. 437.

cannot
a

1866. A magistrate, having determined to refer a disputed point to the nizamat adawlut, should not decide the case out of which the point has arisen, until again directed to do so by the session judge to whose order he objects. Const. No. 1030.

but, if he objects,
should not obey it
till then.

1867. All discussions regarding the relative powers of the European officers, or animadversions upon points of a general nature, not immediately connected with the trial and decision of any case, should as far as possible be kept distinct from the judicial proceedings, and conducted in the English language. C. O. S. D. A. No. 26, April 18, 1811.

Such
should
conduct
lish.

1868. In making references to the nizamat adawlut, copies are to be transmitted instead of original papers, unless the officer referring thinks it more proper to send originals, in which case he is to prepare copies for record in his office before submitting the originals. C. O. No. 126 of vol. 2, *L. P.*

Papers are not to
be sent in original
to the nizamat
adawlut.

1869. Whenever any proceedings in miscellaneous cases are referred to the nizamat adawlut for their opinion, orders, or information, the papers in the native languages should be accompanied by an English letter specifying briefly the contents (which should be corroborated and borne out by the papers accompanying it), and the particular point on which the orders of the court are required. C. O. No. 184 of vol. 2.

Papers are to be
accompanied by an
English letter.

1870. In all instances wherein a reference to the nizamat adawlut is made under the above provisions, the determination of such court is to be held final and conclusive. *Beng. and Ben. Reg. X. 1796, sect. 3. Ced. Prov. Reg. XXII. 1803, sect. 3.*

Determination
of sudder court is
final.

1871. If any doubt occurs to the nizamat adawlut with respect to the meaning of any part of the regulations; or if it appears to them, on the occasion of any reference, that the regulations do not sufficiently provide for the case submitted to their decision; they are in the former case to report the circumstances of it to government, that a new regulation may be framed in explanation of such doubt; and in the latter case are to propose a new regulation. *Beng. and Ben. Reg. X. 1796, sect. 4. Ced. Prov. Reg. XXII. 1803, sect. 4.*

How the nizamat
adawlut is to pro-
ceed if in doubt.

1872. A copy of any correspondence passing between the session judge and magistrate, which discusses matters relating to the state of the district, or the mode of conducting business in the magistrate's office, is to be sent by the judge to the nizamat adawlut. C. O. No. 277 of vol. 1.

sent to

CHAPTER VI.

OF RULES OF OFFICE.

SECTION I.

OF THE CUTCHERRY AND OFFICIAL PROCEEDINGS.

Cutcherry.

Letter to nizamat
on delivering
of office.

1873. An officer delivering over charge of his office is to state in his letter to the nizamat adawlut the authority for so doing, the date of the order under which he acts, and the nature of the power vested in the relieving officer. C. O. No. 157 of vol. 2.

ed letters to be
furnished to succes-
sor:

1874. An officer delivering over charge is to furnish the officer who relieves him with a list of all unanswered letters, and of all periodical reports and statements, which having become due have not been forwarded. Periodical reports and statements are considered as due immediately on the expiration of the period to which they relate. C. O. No. 179 of vol. 2.

to be
recorded by the
vacating officer of
his opinions of su-
bordinate officers.

1875. Session judges and magistrates are invariably, prior to delivering over charge of their offices on quitting a district, to record a minute to be made over to their successor, containing their sentiments and opinions on the administration of those subordinate to them up to the period of their quitting the office of control, as well as any other observations, or results of experience, which they deem necessary or useful. C. O. No. 103 of vol. 3.

Rules for preser-
vation of books in
offices;

books to be
numbered and
stamped;

for books
of libra-

1876. With a view to ensure the better preservation of the books belonging to the public offices, which are the property of government, the court issued the following rules: 1st. The head clerk of the English office is to be appointed librarian. He is to be primarily responsible for the custody and preservation of the books composing the office library; but this is not to relieve the judge or magistrate, or other presiding authority, from the general responsibility devolving on him as head of the office. 2nd. Correct catalogues are to be kept up of the books in the library, showing the date of the receipt of each book. They are to be of English paper, and strongly bound for permanent record. 3rd. Each book should have a number labelled upon it, corresponding to a number in the catalogue; and should also be marked on several leaves with the office stamp. 4th. Whenever a book is required out of the library by any officer, other than the judge or magistrate competent to require the same, the librarian is to send a receipt on a slip of paper, which the recipient will sign and return on getting the book: such receipts to be destroyed on the book being returned to the office. C. O. S. D. A. No. 71, July 26, 1855, *L. P.*; and C. O. No. 1183, July 3, 1855, *W. P.*

1877. All officers in civil employ on deliveri

complete. A detailed catalogue must be given and a receipt taken, and the observance of this rule distinctly notified in the report of the officer receiving charge, who will be held responsible according to the receipt granted by him. Govt. Order, *W. P.* November 25, 1841.

1878. An officer, who holds the offices of collector and magistrate, will not be exonerated from the responsibility, which attaches to the latter office, by urging in extenuation of mal-administration that the criminal duties were intrusted to the joint magistrate. C. O. No. 103 of vol. 3. Responsibility of

1879. Magistrates and other judicial officers are to be careful that no more holidays are allowed than those specified in the court's orders (C. O. S. D. A. No. 52, April 6, 1816), which are indispensable under the obligation of religious observances.(a) C. O. No. 50 of vol. 2.

1880. Although there is no law forbidding a magistrate to work on Sundays, and it may be at times necessary for the peace of the district that he should do so, it can scarcely be requisite to dispose on Sundays of cases in his judicial capacity. An order passed on Sunday is not invalid simply on that account; but the magistrate should refrain from opening his court on Sundays except for police purposes and the prevention of crimes and offences which call for immediate intervention of authority. Letter of Nizamut Adawlut to Judge of Jessore, No. 122, January 27, 1853. How far magis-
trate may transact
business on Sun-
days.

1881. The trial of such cases as have been committed and are ready for trial previous to the commencement of the vacation should be completed, although the vacation supervenes in the course of it. And the court of the session judge is never to be closed, during the dashara and mohurram vacations, for the despatch of criminal business, except on those days only when a total cessation from all business is necessary and usual. C. O. No. 141 of vol. 2; and No. 8 of vol. 3. Sessions court
during the vaca-
tions.

1882. Applications for leave of absence in the lower provinces are to be addressed by the session judge direct to the judicial secretary to government. C. O. No. 134 of vol. 3, *L. P.* Leave of absence.
L. P.

1883. In the Western provinces, such applications are to be submitted through the sudder court and are always to be accompanied by a statement of the number of cases remaining undecided at their date on the several civil and criminal files of the judge's office. In cases of illness or emergency a copy of the application made to the court may be forwarded direct to the secretary to the government. Government Order *W. P.* No. 4199, November 5, 1853. Applications for,
W. P. to be sent
through sudder
court.

1884. No persons, except the guards on duty, are to be allowed to wear arms within the catcherry. C. O. No. 172 of vol. 2. Armed persons
not allowed in

(a) It appears to be the present practice of the court to publish annually a list of the holidays to be allowed during the ensuing twelve months.

Care of glass windows in cutcherry.

1885. The civil officer at the head of each cutcherry is to make some one person of the establishment answerable for the glass in each room, that person being liable to pay for any panes that may be broken, unless he informed his superior at the time, and either proved the fracture to have been unavoidable or produced the person who broke them. The mode of dealing with persons breaking panes is left to the sense and discretion of the officer at the head of the department. Glass is not to be used in the windows and doors of civil buildings nearer the floor than $3\frac{1}{2}$ or 4 feet, by order of the military board. C. O. S. D. A. No. 35, May 31, 1839. C. O. No. 46 of vol. 3.

The practice of transacting public business in private residences is objectionable.

1886. In reply to a question whether magistrates are allowed, under any circumstances, to transact the current business of their offices in their private dwellings, the nizamat adawlut thought it sufficient to observe that, when sitting as a criminal judge, the magistrate must sit in the established court-house; at the same time they declined to enter upon the general question of the powers of a magistrate out of office. On another occasion the court held the practice of transacting public business in private residences to be objectionable, and accordingly interdicted it. Const. No. 645. C. O. No. 21 of vol. 2.

Sessions must be held in the court house.

1887. The nizamat adawlut quashed the proceedings in a case, in which the session judge held the trial of a prisoner in the jail on account of her approaching confinement; and directed that she should be tried *de novo* in the established court house, as soon as she should be sufficiently recovered. N. A. R. vol. 6, page 33.

Correspondence.

Letters are to be in a series; to be concise; and distinct on separate subjects.

1888. The letters dispatched from each office are to be numbered in one continued series from the commencement to the close of the year. All officers in their correspondence, as well with each other, as with their respective governments, are to write separate letters on separate subjects, and to annex to each letter a short abstract of its contents. Those letters which contain the most useful information and pertinent suggestions or instructions within the shortest compass are the most valuable, and will be held by the superior authorities in the highest estimation. C. O. No. 184 of vol. 2; and No. 72 *W. P.* of vol. 3. C. O. S. D. A. No. 20, July 2, 1830.

Quotations of letters received how to be made.

1889. Officers who have occasion to refer in their letters to any numbered paragraphs of letters received, are to state briefly in the margin the substance of the several paragraphs to which they so refer. Every letter should, as far as possible, be made intelligible in itself without reference to any other document for the elucidation of its meaning. C. O. No. 150 of vol. 3.

Correspondence to be condensed by

practicable.

1890. With a view to reduce as much as possible the bulk of public correspondence, it is directed, that in cases of minor importance, and certainly in all cases where the mere report of an occurrence or solicitation of formal sanction is made, the reference should not be by the transmission of several enclosures, being the originals or copies of each reference from the several subordinate officers in succession, but by a single letter or endorsement; and this rule should be applied whenever it is practicable. In cases which involve an important principal, or which may be intricate in their details, and which may have produced elaborate discussions, which cannot be rightly conveyed by any abbreviation, it is of course

proper, that the mass of the papers should be forwarded ; but this should always be avoided when practicable. C. O. No. 17 of vol. 4. C. O. Sup. Pol. *L. P.* No. 7 of 1848.

1891. Magistrates are to file separately the circulars and correspondence of the superintendent of police. When letters addressed to that officer require immediate attention, the word “immediate” or “urgent” is to be endorsed on the cover. C. O. Sup. Pol. *L. P.* Nos. 18 of 1838 ; and 2 of 1841. Correspondence of superintendent of police.

1892. Sealing-wax is not to be used for public dispatches ; envelopes are to be closed with gum arabic ; and the seal of office is to be stamped upon each in lamp-black. Govt. Notification, Aug. 17, 1842. Sealing wax not to be used.

1893. Officers are to be careful that native gentlemen, and particularly those of high rank, are addressed in all public documents in a courteous style suitable to their station in society. C. O. No. 95 of vol. 3. *L. P.* C. O. Sup. Pol. *L. P.* No. 18 of 1841. Address of native gentlemen.

1894. Official communications in the native languages between European covenanted officers and uncovenanted judges should be made by roobakaree. The following forms of address are to be used in official communication with such officers : Mode of communication with and form of address of uncovenanted judges.

Principal Sudder Ameen.

Christian, Sir, Esquire.

Mahomedan,

Hindoo,

Sudder Ameen.

Christian, Sir, Esquire

Mahomedan,

Hindoo,

Moonsiff.

Christian, Sir, Mr.

Mahomedan,

Hindoo, ایضاً ایضاً

C. O. Nos. 122 and 128 of vol. 2.

1895. The simplest form for a magistrate to use in notifying a wish to have the services of any party as an arbitrator, is to send a copy of the roobakaree recording consent to arbitration, with these words, or a translation of them, written below “—copy of the above proceeding forwarded to—for his information. The attendance of—is requested at the office of the magistrate on—date.” Or, “he is requested to signify his acceptance of the office of arbitrator by returning this copy with a note stating such acceptance entered on it, to the magistrate’s office—date.” This copy of the proceeding should be authenticated by the magistrate’s official seal and signature. C. O. No. 87 of vol. 4. Mode of notifying the appointment of any person as arbitrator.

Records.

Record keepers
to keep a register
of all records ;

1896. The record-keepers are to keep a register, in the vernacular, of all the proceedings, documents, and other records belonging to the court to which they are respectively attached, in a book, each leaf of which is to be attested by the officer presiding or his assistant, and on the last leaf of which he is to specify in his own hand-writing the number of pages contained in the book. *Beng. Reg. XVIII. 1793, sect. 4. Ced. Prov. Reg. XIII. 1803, sect. 4.*

and to endorse
a

1897. The record-keepers are to endorse upon the back of every paper or document, which they enter in the register, the number of the page in which it is registered, and the endorsement is to be attested with their official signature. *Beng. Reg. XVIII. 1793, sect. 5. Ced. Prov. Reg. XIII. 1803, sect. 5.*

And to take care
that the records
are not destroyed,
or removed ;

1898. It is the duty of the keepers of the records to see that the records of the court are not destroyed by insects, damp, or otherwise, and that they are not removed without the orders of the court. *Beng. Reg. XVIII. 1793, sect. 6. Ced. Prov. Reg. XIII. 1803, sect. 6.*

under penalty of
dismissal.

1899. If any records entered in the register are destroyed in consequence of the neglect or any omission of the keeper of the records, or if any such records are not forthcoming and they are not able to give a satisfactory account of them, they are liable to dismissal from office. *Beng. Reg. XVIII. 1793, sect. 7. Ced. Prov. Reg. XIII. 1803, sect. 7.*

Mutilation or re-
moval of records
punishable as for-
gery.

1900. The nizamat adawlut circulated a notification in the native languages, to be published in all offices, cautioning the native officers against making illegal alterations in or changing the public records, and pointing out that such offences are punishable as forgery under the provisions of Reg. II. 1807. C. O. No. 57 of vol. 1.

Responsibility of
officers to keep
their records in
order.

1901. Any officer who permits the records of his office to fall into disorder is to be held responsible to government for the expenses incurred in their re-adjustment ; and any functionary receiving charge of an office, the records of which are in disorder or so immethodically arranged as to prevent the ready production of papers when called for, who fails to make a timely report of their state, is to be similarly held answerable for the outlay attending the assortment of the records. C. O. No. 122 of vol. 3.

Native officers
may be compelled
to deliver records.

1902. As there is no specific provision in the regulations for compelling native officers of government to deliver over charge of the records of the office, such cases must be treated under the general regulations.(a) Const. No. 176.

of deeds to
be deposited
among the magis-
trate's records
I. P.

1903. The register books of offices established under Act XXX. 1838 are to be deposited in the Lower Provinces of the presidency of Bengal among the records of the magistrates or joint magistrates, and in the North Western Provinces among the records of the collectors, of the stations where such offices have been or shall be hereafter established. Act XI. 1851.

Revenue autho-
cannot de-
to see re-

1904. The revenue authorities are not entitled to demand that the records of cases should be sent to them for inspection : but they may depute an officer to examine such records with the permission of the court. Const. No. 693.

(a) It is an offence under the Mahomedan law for a dismissed officer to retain possession of the records of his court, because they can in no case be considered as his property. See Hedaya, Book XX. Chap. 1. "Of the duties of the Kasee."

1905. Vakeels, barristers, and attorneys of the supreme court, and their agents, or the parties themselves, or their authorised agents, should be permitted, under proper precautions, to have access to the records in criminal cases in which they are themselves concerned or engaged, and without requiring a petition for such permission on stamped paper. Letter of Nizamut Adawlut to Judge of the 24-Pergunnahs, No. 1580, November 26, 1852.

Access to records
of criminal cases.

1906. In 1831 the magistrates were authorized to destroy all the Persian records of their courts of a date prior to the 31st December 1815, except the proceedings in cases of commitment for trial before the court of circuit, and any other records which they thought it necessary to preserve. So in 1835 the magistrates in the lower provinces were allowed to destroy the Persian records of their courts of a date prior to the 31st December 1820, with the same precautions: and those in the Western provinces, who required more room in their record offices, were permitted to burn such papers in each case as were connected with the investigations of the police. And in 1850 the court sanctioned the destruction of accumulated records of the magistrates' courts from 1830 to 1845 inclusive, but directed that all records of cases under Act IV. 1840 should be preserved. C. O. Nos. 88, 180, and 182 *W. P.* of vol. 2, and No. 35 of vol. 3, *W. P.*

Destruction of
old records.

1907. Records of sessions trials generally of above twenty years' date; and all records of trials of above ten years' date in which the prisoners were acquitted, or in which the period of sentence has expired; and records of cases appealed to the sessions court of above five years' date: may be unobjectionably destroyed, and should be destroyed from year to year to prevent accumulation. But individual cases and papers may be preserved on any grounds which appear to the judge sufficient; and in cases of acquittal or expiry of sentence the final roobakaree should always be preserved, as well as the entire record of those cases in which accused parties are still eluding apprehension. C. O. No. 1527, December 8, 1854. *W. P.*

Rules of 1854
W. P. for selection
of records to be
destroyed.

1908. Old records may be made over to magistrates for the purpose of manufacturing paper instead of being burnt. But due precaution must be used that the papers may not be misapplied; and the papers should be torn into small pieces before they are removed from the record room. C. O. Government Bengal, No. 19, April 4, 1855.

To be made over
to jail for paper
manufacture;

1909. When such records are made over to the jail by the revenue offices, they are to be paid for at the current market rate for waste paper. C. O. Government Bengal, No. 23, June 15, 1855.

and to be paid for.

1910. To prevent the specification of additional documents in applications for copies after their presentation and the passing of an order upon them, petitioners are to be required to mention in words the number of documents of which transcripts are required, and to insert the date of application immediately after the list of papers. C. O. No. 132 of vol. 3.

Copies.
Applications for
copies.

1911. When a deed has been once filed in court, it becomes a record, and a copy may be taken on the stamp prescribed for copies of records. Const. No. 428.

A deed once
becomes a record.

1912. Minutes recorded by the judges of the sudder dewanny and nizamut adawlut on a question of general importance and submitted to government, are not to be considered as public documents; consequently, copies should not be granted to private individuals on their application. Const. No. 718.

of
ad

Letters from or resolutions passed by the nizamat adawlut.

1913. Whenever applications are made for copies of any letters from or resolutions passed by the nizamat adawlut, the applicants are to be referred to that court. This rule does not apply to the sentences of the court in criminal trials; and in the Western provinces, it is applicable only to copies of letters, resolutions, and other orders recorded in the English language. C. O. Nos. 160, L. P. 207, W. P. and 218 W. P. of vol. 3.

Copies may be by individuals at their own expense on unstamped paper.

1914. Individuals may make, for their private use and at their own expense, copies of judicial papers, with the permission of the court, on any paper which they prefer; but if such copies are not made on stamped paper, they are not to be authenticated by the seal or signature of any court or public officer, and are not to be received as evidence in any court of justice, or in any public office whatever. Reg. XXVI. 1814, sect. 16, cl. 4.

1915. The above provision has not been repealed by the subsequent stamp laws. Const. No. 408.

Persons, not officers of the court, may be employed in making copies.

1916. The prohibition contained in sect. 2. Reg. VIII. 1825, against the employment of others than the duly constituted officers of the court, need not be construed to preclude other persons than the regularly appointed officers of the court from taking copies of public documents, with the sanction of the officer presiding, for the use of private individuals, at the expense of those who employ them. Const. No. 407. Reg. III. 1829, sect. 6.

Papers referred to be the supreme court.

1917. The presiding officer of any court on application being made to him in the usual form for leave to take a copy of any recorded *proceeding* of his court, for the purpose of being produced in evidence before her majesty's supreme court of judicature, is (provided there be no special objection to granting the copy, in which case a proceeding to that effect should be recorded by the presiding officer) to direct such copy to be made at the expense of the party applying for the same; and is to permit the same, when made, to be examined with the original proceeding by the record-keeper or other person intended to be produced as a witness to the correctness of such copy; and, if any commission shall have been issued out of the said supreme court to such presiding officer for the examination of such person, to examine him according to the tenor of such commission; or, if the party applying for such copy is satisfied with such certificate, to certify under his hand that such copy is a true copy of the proceeding whereof the same purports to be a copy. C. O. No. 45 of vol. 4, L. P.

Rules for the production of documents.

1918. The presiding officer of any court, on application being made to him in the usual form for directions for the production of any *document* in his court, which may be required to be produced in evidence before the supreme court, is immediately to record a proceeding declaring whether there is, or is not, any objection to the production of the document in question, and a copy of such proceeding is to be given to the applicant. The objection, whether arising from the pendency of any case to the decision of which the document is necessary, or other cause, is to be fully stated in the proceeding; and the presiding officer is in that case to use his best endeavour to remove the objection by the decision of the suit, or otherwise, as speedily as may be practicable. If the presiding officer records that there is no objection to the production of the document in question, or if any recorded objection be afterwards removed, then upon service upon the record-keeper of a *subpoena*

tecum, and on tender of his expenses, the record-keeper, or some subordinate officer commissioned by him, is to proceed with the document in question to Calcutta, and produce the same before the supreme court according to the exigence of the subpoena. C. O. No. 45 of vol. 4, *L. P.*

1919. The names of the heathen deities are not to be prefixed to the proceedings or orders of the courts, or to any processes emanating therefrom. But this has no reference to petitions, documents, or papers of any kind, presented to the courts, in regard to which all interference is prohibited. C. O. No. 96 of vol. 3, *L. P.*

Proceedings.
Not to be h
ed by heathen
deities.

1920. Act XXIX. 1837 gives the governor general in council power, by an order in council, to dispense either generally, or within such local limits as should seem meet, with any provision of any regulation of the Bengal Code, which enjoins the use of the Persian language in any judicial proceedings or in any proceeding relating to the revenue, and to prescribe the language and character to be used in such proceedings: and also to delegate this power to any subordinate authority. Accordingly, such power having been delegated to the governor of Bengal, it was directed that, in the districts comprised in the Bengal division of the presidency of Fort William, the vernacular language of those districts should be substituted for the Persian in judicial proceedings and in proceedings relating to the revenue. C. O. S. D. A. No. 3, February 9, 1838.

The vernacular

1921. The Oordoo language is the language of record in all proceedings and orders in the nizamat adawlut at the presidency, and it is to be written in the Persian character. In criminal trials referred to that court, with exception to trials for the crime of thuggee, all papers which are not drawn up in the Persian or Oordoo language, are to be accompanied by translations in the latter. In districts in which the Oordoo language is current, it is to be written in the Nagri character. In districts in which either the Oordoo or the Bengalee is the current language, parties are to be allowed to present all petitions and pleadings in any language they think most suitable to their purpose; but any document so presented, which is not written either in the Persian, Oordoo, or Bengalee, is to be accompanied by a translation in one of those three languages. The same rule is applicable to futwas and bewustahs required from the law officers. The authorities in the Bengal districts are to correspond with each other in the vernacular language, and to employ the Oordoo in their correspondence with the courts of other districts. The same rule is to be observed, *mutatis mutandis*, in Cuttack and the other provinces subject to the jurisdiction of the nizamat adawlut. C. O. S. D. A. No. 42, July 5, 1839. C. O. No. 112 of vol. 3, *L. P.*

The Oordoo the
language of the
nizamat adawlut.

To be written in
the Nagri charac-
ter.

1922. In using the Bengalee language, the courts are to adopt a style equally removed from the colloquial and that employed by the pundits; officers are to pay particular attention to this subject, and to refer their amlah to the Bengalee version of the Regulations of 1793, in regard both to the style, and the terms which usually occur in legal proceedings. C. O. No. 84 of vol. 3, *L. P.*

1923. In the Western provinces, the use of Persian in all criminal proceedings, petitions, and writings of what kind soever, is to be wholly discontinued, and the Hindoostanee to be adopted in its stead. In criminal trials referrible to the nizamat adawlut, Persian transla-

tions of evidence recorded in the vernacular need not be transmitted : but it is the duty of session judges to transmit all proceedings they refer to, or send up on a call of, the court, written in a correct Oordoo style, and fair and legible character ; and to require the magistrates, whenever uncommon words or obvious provincialisms occur in a record of evidence, to cause the mohurir at the time of taking it down to enter in the margin the corresponding or equivalent term in Persian. The style used must be clear and idiomatic ; and it is not sufficient merely to substitute a Hindoostanee for a Persian verb at the end of a sentence. C. O. No. 26 of vol. 3, *W. P.*

1924. There are two styles of composition in Oordoo; one little distinguished from Persian, excepting in the use of Hindee verbs, particles and inflections ; the other having a much freer use of ordinary Hindee words and made designedly as easy as practicable to persons not familiar with Persian. The latter is the style which without any needless or affected avoidance of well-established Persian words or expressions should be habitually employed in all the public offices. Government Order, *W. P.* No. 633 A, May 9, 1854.

zareebagh, &c.

proceedings addressed to the assistant to the governor general's agent stationed at Hazareebagh or Lohardugga, are to be written in the Oordoo language. C. O. S. D. A No. 27, November 23, 1838.

Oordoo to be used in thuggee proceedings.

1926. The Oordoo Hindoostanee, which is the language most universally prevalent throughout India, and with which even the thugs of Lower Bengal must, from their wandering habits and practice of conversing with travellers from all parts of the country, be well acquainted, is to be used by all the officers employed in the investigation of charges for thuggee. C. O. No. 241 of vol. 2.

to be used in cases in which Europeans are concerned.

1927. All processes issued to an European defendant should be in the ordinary language of the court and in English. Such person filing his pleadings and petitions in the vernacular on the prescribed stamp may be permitted to add translations thereof in English on unstamped paper : but it is no part of the duty of the court to furnish him with translations ; he must procure a person duly qualified to interpret for him. The deposition of an European witness must be recorded in English, and a vernacular translation made by the court and annexed thereto. Const. No. 1035.

Miscellaneous.

Mode of calculating the period allowed

1928. When the period, within which an appeal should be lodged or any official act done, consists of days or weeks, the full number of days or weeks mentioned in the order is to be allowed, exclusive of the day on which the order is passed ; and when a month or year is mentioned, it should be reckoned according to the English calendar, that is to say, the month should not be invariably reckoned at thirty days, and the year should comprise twelve English calendar months. C. O. No. 158 of vol. 3.

References to the advocate general.

1929. All references which are made for the opinion of the advocate general on points of English law are to be submitted through the nizamat adawlut. C. O. No. 133 of vol. 3.

to be

1930. All references regarding chemical questions and operations on account of government, are to be made to the professor of chemistry, medical college, Fort William, who

is privileged to issue and receive letters connected with his department free of postage. But such references are to be limited to cases of urgent necessity, in which the local medical officer cannot afford the required information, and to doubtful cases of poisoning, &c., regarding which there is need of information for directing the researches of the police. Magistrates are not to call upon the chemical examiner to make affidavits before one of the magistrates of Calcutta, regarding any matter referred for examination, as such affidavits are not legal evidence. C. O. Nos. 110, and 146 of vol. 3. In such cases ordinary recourse should be had to the local professional agency on occasions needing an analytical detection of poison in substances or human subjects. C. O. No. 1282, October 10, 1854. *W. P.* With this view tests and apparatus for medico-legal investigations have been forwarded to the civil surgeons at Benares, Mirzapore, Allahabad, Cawnpore, Meerut, Delhi, Agra, Bareilly, Moradabad, and Saugor; and magistrates requiring professional agency for the detection of poison should forward the suspected articles to the magistrate of the nearest of those districts. C. O. No. 1550, November 17, 1855. *W. P.*

made to the
fessor of chemis-

who is not to be
required to make
affidavits before a
magistrate.

In some places
reference can be
made to local offi-
cers.

1931. Officers, forwarding to the examiner substances for chemical examination, are to furnish him with every detail that can be obtained both from the civil surgeon and those persons who depose to the facts of the case. C. O. No. 129 of vol. 3. C. O. Sup. Pol. *L. P.* No. 6 of 1843.

Details of the
case are to be for-
warded with
reference.

1932. No English stationery of any kind is to be charged for in contingent bills, as such articles are to be obtained by indents upon the government stationery office, which are to be drawn out in printed forms supplied by the superintendent. All differences, which may arise between the superintendent and indenting officers are to be referred for the decision of the board of revenue. As a general rule all indents should be annual; and from all offices above Allahabad should be despatched by the 1st May, from other offices by the 1st October. On the receipt of packages, they are to be opened and their contents counted before the head of the office or his assistant. Complaints as to the quality of supplies received should be accompanied by an average sample of the article complained of, duly attested by the complaining officer, and the marks on the packages are to be reported. If good articles have been damaged in transit, the cause should be noted. Articles may be purchased on the spot, only when indispensable; and supplies should be borrowed from neighbouring offices. The actual expenditure on country paper, and other articles not supplied on indent, is to be included in a monthly bill, and forwarded to the superintendent. Care is to be taken to prevent the use of government stationery in any other than the public service. The stores should be kept under lock and key of a responsible writer in the office, whose name is to be attached, in addition to that of the indenting officer, to all indents. A book is to be kept of all issues of stationery; and such issues are to be acknowledged therein by the signature of the person who takes the articles. Packing cases received from the stationery office are to be sold, and the proceeds credited to the superintendent. Government Order, *L. P.* and *W. P.* April 1851.

Rules for
supply
ery by
stationery office.

Date of indent.

Receipt of sup-
plies.

Complaints.

Articles not to
be purchased on the

Monthly bills.

Precautions
against misuse.

Book of
diture.

be sold.

1933. All paper used in the courts is to be properly prepared for the purposes of record, such materials being used in the manufacture as will render it proof against the so prepared as to be

proof against the attacks of insects.

attacks of insects. Arrangements may be made by the different offices with the courts for a regular supply of jail-made arsenicated paper to the several judicial and police officers stationed in the interior of the district; and where the local jail may not be able to furnish a sufficient quantity, it may perhaps be possible to procure it from an adjacent district without greatly enhancing the cost. It might be desirable to encourage private paper-makers; but proper precautions should be taken to prevent the substitution of turmeric for yellow arsenic, the appearance being similar, but the difference easily discernible to the smell or taste. C. O. S. D. A. No. 19, May 12, 1854.

Indents for forms on the government lithographic press.

1934. No charge whatever is made for forms printed at the government lithographic press. Whenever an officer requires lithographic forms of any description, he is to apply direct to the superintendent of the government press for them, and not through the nizamat adawlut; but he is to indent for those forms only which have been approved of by the court. Such forms are kept in readiness; but, if it is inconvenient to wait for them, the statements are to be drawn out in precisely the same forms as those issued from the court: and no alterations should, on any account, be made in any form directed by the court to be used, except with their express permission. C. O. Nos. 118, *W. P.* 136, para. 15, and 235, *L. P.* of vol. 2.

To be accompanied with specimens.

1935. Officers indenting on the government lithographic press for forms of statements &c., are to forward to the superintendent, with their indents, a specimen of the smallest size of paper on which the forms may be executed without material inconvenience. C. O. No. 121, repeated in No. 169 of vol. 3.

Indent for forms of criminal process.

* Similar forms were issued *L. P.* under C. O. No. 8, January 19, 1855.

1936. The court circulated a set of forms of criminal process;* for a three months' supply of which the magistrates are directed to indent upon the Secundra Orphan Press through the court. The number of the English version of the forms indented for will of course depend on the average number of European defendants and witnesses summoned before the criminal courts. For the sake of convenience the registered number of each form is given in the annexed indent.

Form of indent.

No. of process.	NUMBER OF COPIES REQUIRED FOR 8 MONTHS' SUPPLY.			
	Registered No.	English	Registered No.	Oordoo.
1	140		159	
2	141		160	
3	142		161	
4	143		162	
5	144		163	
6	145		164	
7	146		165	
8	147		166	
9	148		167	
10	149		168	
11	150		169	
12	151		170	
13	152		171	
14	153		172	
15	154		173	
16	155		174	
17	156		175	
18	157		176	
19	158		177	

C. O. No. 1264, September 3, 1855. *W. P.*

1937. An indent is to be submitted, in the following form, to the register of the nizamat adawlut, on the 1st October of each year for such forms of statements, warrants, &c., usually supplied to the local authorities from that office, as will be required for the ensuing year. 1st October. *L. P.*

Indent for lithographed forms for the year 1848.

Description of form.	No. last applied for.	No. in store on 1st October 1847.	No. now indented for.
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C. O. No. 26, July 9, 1847. *L. P.*

1938. Whenever there is occasion to require the aid of establishments of a contingent and temporary character, officers are to submit, in every practicable case, and when time will admit of it, a statement of such extra charges, in order that they may be sanctioned by government before they have been actually incurred. C. O. No. 86 of vol. 4. *L. P.* Temporary contingent establishments.

1939. It is so injurious to the service that men, who have been dismissed for misconduct from one department, should be considered eligible for re-employment in any other department, that such practice must be entirely discontinued. It is a wholesome check upon negligence and dishonesty for the servants of government clearly to understand that probity and diligence are the only means of retaining employment under government. Despatch of court of directors, No. 27, July 10, 1850 in C. O. Sup. Pol. *L. P.* No. 11 of 1850. C. O. No. 46 of vol. 4. *L. P.* Rules for employment of officers dismissed.

1940. The foregoing rule was not intended to apply to cases of inaptitude for some particular branch of occupation, to which a native servant may have been originally appointed, and from which it may have been necessary on that account only to displace him. C. O. Sup. Pol. *L. P.* No. 12 of 1851. C. O. No. 75 of vol. 4.

1941. The countersignatures by civil officers of plans and other documents relating to public works, is not to be deemed as implying a tacit approbation or confirmation of the statements contained in the documents to which they are affixed. A separate heading is to be introduced in all documents requiring countersignature for the remarks, if any, of civil functionaries, and when they have none to make for the simple record of the fact: but such papers are not to be detained unnecessarily; and, for the purpose of ascertaining upon whom the blame of delay should rest, the executive engineers are to be required invariably to note the dates of dispatch, and civil officers those of receipt and return. C. O. No. 222 of vol. 3. *L. P.* Countersignature by civil officers of plans relating to public works.

1942. In the case of delays in the execution of repairs and alterations of public buildings, it is the duty of the magistrate, or other public officer to whose department the work belongs, to report the circumstances to government, in order that measures suitable to the exigency of the case may be taken. C. O. No. 253 of vol. 1. Magistrate to report delays in the repairs of public buildings.

1943. The commissioners of revenue and circuit, [and executive officers when on duty at stations not their head quarters], are allowed to occupy the circuit houses when not required by officers holding criminal sessions. The session judge may also authorize the temporary occupation of those houses by persons employed on the public service, under the express condition that they uniformly vacate them when required for the above-mentioned officers. This indulgence is not to be extended to persons wishing to occupy cutcherries or any other public buildings in the judicial department, and the magistrates are strictly prohibited from allowing any individuals to occupy such buildings for their personal accommodation. On the occurrence of any extraordinary emergency which appears to warrant a temporary exception from this rule, the magistrates are to apply for the previous sanction of government through the session judge, explaining the cause of the emergency, and specifying the period for which the indulgence is solicited. C. O. No. 196 of vol. 1.

Circuit houses
are in the custody
of the magistrates.

1944. The custody of the circuit houses at out-stations, when not in use, remains with the magistrates who are to arrange for the purpose from the general establishments at their disposal. C. O. No. 1573, Nov. 20, 1855. *W. P.*

No more circuit
houses to be built.

1945. It was determined by government in 1829 not to build circuit houses at stations, where they had not then been erected ; and commissioners of circuit were directed to find their own accommodations at such places. C. O. No. 35 of vol. 2.

Survey of build-
ings before pur-
chase.

1946. No building is to be purchased for public purposes without the previous survey and report of the executive officer of the district. Extract from despatch of the court of directors No. 13 of 1849 in C. O. Sup. Pol. *L. P.* No. 6 of 1849.

Thatched houses.

1947. No thatched houses are to be erected contiguous to public buildings without a reference to the officers of the department under whom such buildings may be. C. O. Sup. Pol. *L. P.* No. 2 of 1851.

Documents and
information obtain-
ed officially not to
be communicated to
individuals without
the consent of go-
vernment.

1948. Documents and papers, which have come into the possession of officers officially, are in no case to be made public, or communicated to individuals, without the previous consent of the government to which alone they belong. The officer in possession of such documents and papers can only legitimately use them for the furtherance of the public service in the discharge of his official duty ; and it is to be understood that the same rule which applies to documents and papers, applies to information of which officers become possessed officially. Govt. Notification, August 30, 1843.

The superinten-
dent of police will
take notice of any
infringement of this
rule.

1949. The superintendent of police will, under the above notification, bring to the notice of the government all instances in which he concludes that information procured officially has been afforded to public journalists, or the editors of periodical publications, by the officers employed in the police or thuggee departments. C. O. Sup. Pol. *L. P.* No. 11 of 1844.

Police notifica-
tions to be sent to
vernacular

1950. Public notifications of general importance should be sent for publication to the vernacular gazettes, as the best means of giving them a wide currency among the natives.

SECTION II.

OF STAMPS.

1951. Duties on law papers are to be levied at the rates and in the manner prescribed in the following schedule B; and no papers are to be filed, exhibited, received, or admitted in any court of judicature, of the description stated in the schedule to require a stamp, unless the same is duly stamped. Reg. X. 1829, sect. 17. for law papers.

1952. Bail-bonds, mochulkas, recognizances, security-bonds, (*hazir* or *fiat zamin*) whether of specified amount, or with a penalty of a specific sum of money, or of indefinite amount, when furnished and filed under special order of a court of justice, civil or criminal, or of any officer exercising judicial powers,—are to be charged as petitions to the court or authority ordering the same.—*Exemption.* Mochulkas taken on the release of prisoners from the foudaree jail; and mochulkas and recognizances taken from prosecutors and witnesses to secure attendance at criminal trials. Reg. X. 1829, sched. B, art. 1. Bail-bonds, mochulkas, security-

1953. Security-bonds taken by police officers are to be drawn out on plain paper. Const. No. 710. Security-taken by police officers.

1954. Copies of judicial proceedings, of accounts, statements, reports, or the like, filed on record and taken out for use or reference, or when left on proceedings in place of originals withdrawn—are to be charged per sheet, 8 annas. Each sheet is to be of a size not exceeding that fixed for copy paper (No. 3 of the stamp office), and is to be written on one side thereof only. Reg. X. 1829, sched. B, art. 3. Copies.

1955. Under the rules laid down in this schedule, both the applications for copies, and the copy itself, are to be on stamped paper; but the stamp assigned for the application is not in every case to be of the same value as that required for the copy. Const. No. 773. Both the application and the copy must be on stamped paper.

1956. Mokhtarnamahs, wakalutnamahs, and other powers, required to be filed for the conduct of suits, or of proceedings of any kind, pending before the native courts of judicature—are to be charged as prescribed for petitions presented to those courts.—*Exemption.* Mokhtarnamahs executed by native officers and soldiers, belonging to the regular corps on the military establishment of the presidency of Fort William. Reg. X. 1829, sched. B, art. 6. Mokhtarnamahs.

1957. Petitions, durkhasts, and applications, in relation to matters pending before the undermentioned authorities in their official capacities, when not otherwise specified or provided for in the schedule, are to be charged—if addressed to a magistrate or joint magistrate, per sheet, 8 annas;—if to a commissioner of circuit or session judge, one rupee;—if to the nizamat adawlut, per sheet, two rupees.—*Exemptions.* All charges and informations respecting crimes not bailable by the regulations. Petitions from prisoners, convicts, persons under examination, or otherwise in duress, or under restraint of the court or its officers. Petitions of appeal presented to magistrates against chokeedaree assessment. Communications made to magistrates in regard to police matters not intended for record. Reg. X. 1829, sched. B, art. 7.

How far petitions may be received on unstampt paper.

1958. Only such petitions on unstampt paper, as are allowed by the regulations, should be filed on record: and, as a general rule, petitions required to be presented on stampt paper should not be read, unless so presented; but the magistrates may exercise their discretion in particular cases, where sufficient reason appears for the petition not having been presented on the required stampt paper. Const. No. 247.

If the matter cannot be comprised in one sheet.

1959. When the whole matter of a petition of plaint or appeal cannot be comprised in a single sheet of stampt paper, the additional sheets need not be on stampt paper. Const. No. 870.

How far prisoners may petition on unstampt paper.

1960. The above exemption in favor of persons under duress is to be construed to allow prisoners confined under civil process to petition on plain paper only in matters relating to their treatment in jail; and persons confined under criminal process, in matters relating to their treatment in jail, and the case in which they are confined. C. O. S. D. A. No. 17, May 28, 1830.

Razeenamahs.

1961. Razeenamahs, rafânamahs, sulhnamahs, or the like, that is to say—any written application, whereby, or according whereunto, a suit pending in a civil court is to be adjusted, or is capable of adjustment without argument in court, and award of the presiding judge, or other officer,—are to bear the stamp required for a pleading (a) in the court wherein it is filed. Reg. X. 1829, sched. B, art. 10.

Applications for payment of money deposited in court.

1962. Applications for the payment of money deposited in court must in every case be made on stampt paper as a record, unless a specific order has at the same time been passed for the payment of the amount. Const. No. 1093.

Size of stampt paper to be used under the above rules.

1963. It is competent to judicial officers, subject of course to the control of the sudder court, to lay down as a rule of court, or of their respective cutcherries, the size and description of paper to be used for petitions, or for other documents and records of their office, when there is no provision on the subject in the regulations for the department. Under this rule it is directed that the size No. 4 of the stamp office is to be that used for the purposes specified in the articles quoted above from schedule B. Reg. X. 1829. C. O. S. D. A. No. 56, August 10, 1832.

Rules regarding destruction of filed stampt papers.

1964. The following rules are to be observed in regard to filed stamps. All stamps filed, and not liable to be returned, are to be punched. In old cases the duty is to be performed by the serishtadar of the zillah court, or magistrate's office, but under the supervision of the judge or magistrate. In pending cases, the punching is to be effected by the same officer after decision, and before consigning them to the record office. Stamps which may be now filed, will be punched by the serishtadar or other officer receiving them; and judges, and magistrates, joint, assistant, and deputy magistrates of all grades, when signing the order for filing are to see that the rule is observed. Blank stamps, which are filed to make up for deficient value of any petition, are to be destroyed by the judge or magistrate, and a certificate of the fact is to be endorsed on the principal stamp after decision of the case, and before consigning it to the record office. C. O. No. 94 *W. P.* and No. 98 *L. P.* of vol. 4.

(a) The only pleadings in criminal courts are petitions: the stamp therefore required in the magistrate's and inferior courts must be eight annas.

BOOK II.

OF THE POLICE AND MINISTERIAL OFFICERS, LANDHOLDERS, AND JAIL.

CHAPTER I.

OF THE SUPERINTENDENTS OF POLICE.

1965. A superintendent of police was first appointed, under Reg. X. 1808, for the divisions of Calcutta, Dacca, and Moorshedabad ; and under Reg. VIII. 1810 similar arrangements were adopted in Patna, Benares, and Bareilly. But these offices were abolished by sect. 7, Reg. I. 1829, because it appeared “ expedient and necessary to place the magistracy and police, and the collectors and other executive revenue officers, under the superintendence and control of commissioners of revenue and circuit, each vested with the charge of such a moderate tract of country, as might enable them to be easy of access to the people, and frequently to visit the different parts of their respective jurisdictions.” Subsequently, under Act XXIV. 1837 the governments of the Bengal presidency were empowered to appoint superintendents of police for their respective territories, or for any parts thereof, and in such cases the commissioner of revenue was to cease to exercise any powers in regard to the magistracy and police. At present there is no superintendent of police in either the Lower or the Western provinces ; but the commissioners of revenue and circuit exercise all the powers, with which the superintendents of police have been invested, by the above-mentioned and other regulations, under the following rules.

Appointment.

1966. The primary object of the appointment of the superintendents of police being the apprehension of dacoits, kazzaks, thugs, budhucks, and other descriptions of public offenders, guilty of the commission of robberies and other crimes by open violence, they are from time to time to proceed into the different zillahs comprised within the limits of their jurisdiction, according as they may deem necessary and proper, or as the government may direct :—provided, however, that this is not to be construed to prevent them from exercising the full powers of their office throughout the whole extent of their jurisdiction, in whatever part of it they may at any time be resident.(a) Reg. VIII. 1810, sect. 4.

He is from time to time to proceed

diction.

(a) Commissioners are expected to visit the interior of the several districts under their authority, during the temperate season of the year ; and must be prepared at all times to proceed to any part of their jurisdiction, when circumstances appear to require their presence. Govt. Order, July 7, 1829.

To keep himself constantly informed of the actual state of the police.

1967. It is the duty of the superintendent to keep himself constantly informed, by communication with the local magistrates, with the darogahs of police, and with the zumeendars and others, and by every other practicable means of inquiry, of the actual state of police, in the several zillahs comprised within his jurisdiction; and to submit to government any information respecting the prevalence of public offences in any of those zillahs, or on other points appearing to him to require the interposition of government. Reg. VIII. 1810, sect. 5.

His process how to be executed.

1968. The superintendent of police is empowered to execute his warrants, and other process, in the form prescribed by the regulations, either by means of his own officers, or through the local authorities, as he judges proper. The magistrates, and all persons acting under them, are required to aid and support the officers of the superintendent of police in the execution of any warrant or other process issued by him, under his seal and signature; and resistance to any process so issued is punishable in like manner as provided by the regulations for resistance to the process of a magistrate. Reg. X. 1808, sect. 6.

Resistance to it how punishable.

Sentence may be passed by himself.

1969. The superintendent of police is competent to pass sentence against any person, amenable to his jurisdiction, who is convicted before him for resistance to the execution of a legal process issued by him under the above rule; and also against all persons apprehended by and proved guilty before him of any offence, punishable under the existing regulations by the magistrates. Const. No. 98.

Concurrent jurisdiction with magistrates.

1970. The superintendent of police is to possess a concurrent jurisdiction with the several magistrates within his jurisdiction. Reg. X. 1808, sect. 5.

He may certify his sentences to the magistrate for execution.

1971. The superintendent is competent to certify all sentences passed by himself on offenders, in cases in which such sentences cannot conveniently be carried into effect under his immediate directions, to the magistrate of the district in which the offence has been committed; and the magistrate, to whom such application is addressed, is authorized and required to carry the sentence of the superintendent into execution, in the same manner as if it had been passed by the magistrate himself. Reg. III. 1812, sect. 5, cl. 1.

So, in commitments made by him to the sessions court, the magistrate to superintend the trial to the magistrate of the district in which the offence is alleged to have been committed; and the magistrate, on receipt of such application, is then to superintend the conduct of the prosecution before the sessions court in the same manner as if the accused party had been committed or held to bail by the magistrate himself. Reg. III. 1812, sect. 5, cl. 2.

1972. In cases in which persons are committed or held to bail by the superintendent of police for trial before the sessions court, and he is not conveniently able to superintend the conduct of such prosecutions himself, it is competent to him to certify the order regarding the trial to the magistrate of the district in which the offence is alleged to have been committed; and the magistrate, on receipt of such application, is then to superintend the conduct of the prosecution before the sessions court in the same manner as if the accused party had been committed or held to bail by the magistrate himself. Reg. III. 1812, sect. 5, cl. 2.

But the superintendent may carry his own sentences

1973. Provided, however, that nothing contained in the preceding clauses is to be construed to prevent the superintendent of police from causing sentences passed by him under the regulations being carried into effect under his immediate directions, or from superintending the conduct of prosecutions against persons committed or held to bail by him for trial before the sessions court, in cases in which he deems it advisable to execute those duties himself. Reg. III. 1812, sect. 5, cl. 3.

1974. Should the superintendent of police, on visiting any district of his jurisdiction, deem it advisable to take under his immediate charge, for the purpose of exercising temporarily the powers of magistrate, any police thana or thanas of such district, he is to make the necessary application for that purpose to the local magistrate, who is to comply with all requisitions to that effect from the superintendent of police without awaiting any specific orders from government. Reg. XVII. 1816, sect. 12, cl. 1.

He may take charge of any thanas.

1975. In such case the superintendent of police is to exercise the same powers as are vested in the magistrates with regard to the removal or suspension of any of the police officers attached to the thanas, of which the superintendent takes charge under the foregoing clause; and the magistrate is not authorized, without the special sanction of government, to exercise any concurrent jurisdiction in such thana or thanas, except in the cases provided for in sect. 16, Reg. XXII. 1793; sect. 15, Reg. XVII. 1795; and sect. 16, Reg. XXXV. 1803 [*i. e.* cases in which a magistrate empowers his police to apprehend persons in another jurisdiction, when the offence was committed within his own jurisdiction, or when the offender was actually within his jurisdiction at the time when the charge was preferred against him: *v. para.* 188]. Reg. XVII. 1816, sect. 12, cl. 2.

In such case he is to exercise the powers of magistrate therein; and the magistrate of the district has only the same concurrent jurisdiction therein, as he has in other zillahs.

1976. The superintendent of police, in his capacity of magistrate, is equally subject to the control of the sessions court with other magistrates; and warrants and orders of the sessions court may be issued to him in like manner as they are usually issued to the magistrates. Const. No. 82.

In his capacity of magistrate he is subject to the sessions judge as a magistrate.

1977. A commissioner of circuit was informed that he was not competent, in that capacity, to fine a person under sect. 5, Reg. VIII. 1825 [which provided for the punishment of persons bringing false and malicious charges against an European public officer, but is repealed by Act XXVI. 1839]; but that, with regard to a complaint against the nazir and peons of the magistrate's office, he possessed, as superintendent of police, the powers of magistrate in the punishment of false and malicious complaints. Const. No. 754.

Power to punish for false and malicious complaints.

1978. The superintendent of police appointed under this Act is to exercise all the powers vested in the commissioners of circuit by sect. 3, Reg. I. 1829 [*i. e.* the powers formerly vested in the courts of circuit] in regard to the appointment, suspension, and removal of any ministerial or police officer, subordinate to any magistrate or joint magistrate; and such orders of the superintendent of police are not open to revision by the nizamat adawlut. Act XXIV. 1837, sects. 4 and 6.

Powers in regard to the appointment, suspension, and removal of ministerial and police officers.

1979. The superintendents of police are competent to remove or appoint any ministerial officer employed upon their respective establishments, whenever they see sufficient cause; and all such appointments and removals are final. Reg. XVII. 1816, sect. 10.

1980. The superintendent of police is authorized to make an application to be furnished with a copy of proceedings in trials by the sessions courts, and it is incumbent on those courts to comply with such applications. Const. No. 141.

He may require copies of the proceedings in the sessions courts.

1981. The superintendent of police is authorized to correspond, either publicly or secretly, with the officers of government in every department, upon subjects connected with

All public officers are to co-operate with the superin-

tendent, and to
afford him every

the discharge of the duty committed to him :—and all public officers are directed to furnish the superintendent with any information they may possess upon such subjects ; as well as generally to co-operate with him, and to afford every assistance in their power to enable him to accomplish the objects of his appointment. Reg. X. 1808, sect. 7.

1982. Magistrates are enjoined to afford every aid and co-operation to the superintendent of police, and his officers, in the discharge of the duties vested in them ; and the different provincial courts are, in like manner, required to give every support to the superintendent and his officers, which is consistent with the principles of justice and the general regulations. Reg. VIII. 1810, sect. 6.

Magistrates to

in.

1983. Magistrates are to communicate freely with the superintendent of police, either privately or publicly, on the subject of gang-robbery ; and are to make weekly reports in English of the progress made in the investigation of any dacoity attended with murder, torture, wounding, or other aggravating circumstances. This rule is also applicable to all murders, homicides, burglaries and thefts attended with murder or by drugging, and to affrays with homicides. C. O. Sup. Pol. *L. P.* No 2 of 1839, and No. 11 of 1851.

He is to com-
municate immedi-
ately with govern-
ment.

1984. The superintendent of police is to communicate immediately with government, through the secretary, upon all matters connected with his office ; and is to act under such instructions as are, from time to time, transmitted for his guidance by the order of government. Reg. X. 1808, sect. 8.

govern-
ment
all matters of po-
lice is to be con-
ducted through the
superintendent.

1985. All correspondence of the magistrates relative to the strength, distribution, or expense of the police establishments, whether temporary or permanent, or respecting any alteration of police stations, or of their local boundaries, and generally all correspondence of those officers with the government which has reference to arrangements on matters of police, is to be conducted through the office of the superintendent of police. Reg. XVII. 1816, sect. 13.

The superinten-
dent is under the
authority of the
nizamut

1986. The superintendent of police is also to be considered under the general authority of the nizamut adawlut, in all matters relative to the police ; and upon any point not expressly provided for by the regulations, or by the orders of government, is to be guided by the instructions of that court. Reg. X. 1808, sect. 9.

Annual state-
ments.

1987. The annual statements for the superintendent of police are to be prepared and despatched so as to reach his office by the end of January at latest. C. O. Sup. Pol. *L. P.* No. 11 of 1851.

CHAPTER II.

OF THE OFFICERS OF POLICE.

SECTION I.

OF THE POLICE ESTABLISHMENTS.

1988. The police of the country is under the exclusive charge of the officers appointed to the superintendence of it on the part of government. The landholders and farmers of land, who were bound to keep up establishments of thanadars and police officers for the preservation of the peace [previous to December 1792, *v. para.* 31], are prohibited entertaining such establishments. (a) Reg. XXII. 1793, sect. 2.

Lower Pro-

The charge of the police vested in whom.

1989. The magistrates were required to divide their respective zillahs, including the rent free lands, into police jurisdictions: each jurisdiction to be ten coss square, except where local circumstances rendered it advisable to form all or any of the jurisdictions of greater or less extent: the guarding of each jurisdiction to be committed to a darogah, or superintendent, with an establishment of officers: the darogahs with their establishments to be stationed in the centre of their respective jurisdictions unless for special reasons it was thought expedient in particular instances to fix them in any other situation; and the jurisdictions to be formed in such manner as to bring the principal towns, bazars, and gunjes, in the centre of them, that the police establishments might serve for the protection of these principal places, as well as the circumjacent country: the police jurisdictions to be numbered, and to be named after the places in which the darogahs and their establishments were stationed. Reg. XXII. 1793, sects. 4 and 5.

The division of the zillahs into police jurisdictions.

Such jurisdictions numbered and named;

1990. The magistrates are not to change the names or numbers of the jurisdictions, nor to alter the limits of them, without the sanction of government. Reg. XXII. 1793, sect. 5.

and the names and numbers are not to be changed.

1991. The magistrates of the cities of Patna, Dacca, and Moorshedabad, were required to divide the cities and the places adjacent, subject to their respective jurisdictions, into

The division of the cities into wards.

(a) This prohibition does not extend to any district included in the jurisdiction of the magistrate of the Jungle Mahals, the police of which, subject to the control of the magistrate, has been or may be committed to the zumeendar, or to the manager of a zumeendaree. It is also declared inapplicable to any landholder, or to any farmer or manager of land, whom government authorizes to entertain an establishment of police officers, whether in the Jungle Mahals, or in any other mahal or district whatever. In such cases particular rules are provided for the zumeendars; and government has the power of extending them, either in whole or in part, to any other mahals, the police of which is entrusted to a zumeendar, or other landholder, or to a farmer or manager of land. See sects. 5 and 6, Reg. XVIII. 1805. Such zumeendars are to be guided also by the rules of Reg. XX. 1817, as far as they are applicable to their duties, as chief police officers. See cl. 3, sect. 83, Reg. XX. 1817 (*para.* 1997).

wards; each ward to be guarded by a darogah with a proper establishment. Reg. XXII. 1793, sect. 26.

The names and numbers of the wards are not to be changed.

1992. The wards were to be numbered and named; and the magistrates are not to change the names or numbers of the wards, or alter their limits, without the sanction of government. Reg. XXII. 1793, sect. 27.

Rules for patrolling the wards throughout the night.

1993. The jemadars of the establishments, with one half of the establishments, are to patrol their respective wards without intermission from sunset until 12 o'clock at night. The darogahs with the other half of their establishments are to patrol their respective wards without intermission from 12 o'clock at night until daylight. The patrols are to move about as silently and with as little noise as possible, that thieves and other disorderly persons may never be apprized of their approach. The patrols of the several wards are to be furnished with a singharah or horn, which they are to sound when they meet with robbers or other persons guilty of a breach of the peace, and have occasion to give the alarm to the other patrols or to the inhabitants of the ward that they may co-operate to the apprehension of the offenders, but not otherwise. Reg. XXII. 1793, sect. 29.

Patrols to be furnished with horns.

Mahalladar and mahalladarin appointed to each ward.

1994. To assist the darogahs in obtaining the earliest intelligence of any robbers or other offenders that are concealed, or have taken up their residence within their respective wards, a mahalladar and mahalladarin are to be appointed to each ward, subject however to the orders of the darogahs, to whom they are to convey immediate information of any offenders that are found in their respective wards. Reg. XXII. 1793, sect. 30.

City police to be guided by Reg. XX. 1817, in discharge of general duties.

1995. The police officers appointed in the cities and towns are to be guided, in their discharge of the general duties of police, by the rules prescribed in this regulation for the guidance of the darogahs of police, as far as the same are applicable, and in the special police duties of the cities and towns by the rules in force which relate to the police of the cities and towns. Reg. XX. 1817, sect. 34.

North West Provinces.

The charge of the police vested in whom.

1996. The charge of the police of the country, throughout the province of Benares, the ceded and conquered provinces, and Bundelcund, is vested, subject to the control of the magistrates, in the officers who are appointed to the superintendence of it on the part of government, and subordinate to them in the landholders, and farmers of land, who by their engagements are responsible for the preservation of the peace within the limits of their respective estates and farms. Reg. XIV. 1807, sect. 4.

Zumeendars entrusted with the police are to be furnished with copies of, and to obey the rules of, Reg. XX. 1817.

1997. Copies of Reg. XX. 1817 are to be furnished to all zumeendars, or other landholders or managers of estates, entrusted with the management of the police; and such zumeendars, or other landholders or managers, are to observe the rules therein prescribed as far as the same are applicable to their duties as chief police officers. Reg. XX. 1817 sect. 33, cl. 3.

The division of the zillah into police jurisdictions,

1998. The several zillahs in those provinces were to be divided into compact police jurisdictions, including indiscriminately the estates of *huzoor tuhseel* landholders, and of mahals paying revenue through a tuhseeldar, as well as lakhiraj lands of every denomination held exempt from the police assessment. Reg. XIV. 1807, sect. 5, cl. 1.

1999. The police jurisdictions are of two descriptions. First, such as are established at the station where the civil court is held, and which are to be denominated the “sudder police jurisdictions.” Secondly, such as are established at any place not being the station where the civil court is held, and which are to be denominated the “mofussil police jurisdictions.” Reg. XIV. 1807, sect. 5, cl. 2.

of two kinds ;
sudder, and mo-
fussil.

2000. The sudder police jurisdiction was to comprise the city or town, at which the civil court was held, together with such part of the suburbs and environs, as it was judged expedient to place under the superintendence of a cutwal with an establishment of darogahs, jemadars, burkundazes, and chokeedars or other watchmen, proportionate to the extent and population of the jurisdiction. Reg. XIV. 1807, sect. 6, cl. 1.

Sudder police
jurisdiction to com-
prise what, with
what establish-
ment.

2001. The mofussil police jurisdictions were respectively to comprise a considerable town or gunj, at which the superintendent of the jurisdiction was to be stationed, together with such part of the adjacent country as it might be deemed advisable to place under the superintendence of a darogah, with an establishment of jemadars, burkundazes, chokeedars or other watchmen, proportionate to the extent and population of each jurisdiction. Reg. XIV. 1807, sect. 6, cl. 2.

Mofussil police
jurisdiction to com-
prise what, with
what establish-
ment.

2002. In proposing a distribution of mofussil police jurisdictions, and the requisite establishments for them, the magistrates were required to attend as much to the population, and number of towns, villages, and other inhabited places, as to the extent of country ; but the latter was in no instance to exceed ten coss square for any one police jurisdiction, unless peculiar local circumstances appeared to require it. Reg. XIV. 1807, sect. 6, cl. 3.

Not to exceed
10 coss square.

2003. If the principal town or gunj, included in any mofussil police jurisdiction, from its extent and population appeared to require a cutwalee establishment ; or if it appeared expedient in any instance to include more than one considerable town or gunj within a mofussil police jurisdiction, and to station a naib darogah, or jemadar, with a subordinate establishment of burkundazes, chokeedars, or other watchmen, at the town or gunj, not the station of the darogah of the jurisdiction, the magistrate was to propose such an arrangement. Reg. XIV. 1807, sect. 6, cl. 4.

Subordinate di-
vision and esta-
blishment in cer-
tain cases.

2004. The police jurisdictions were to be numbered, and named after the places at which the superintending officers were stationed. The names, numbers, limits, or establishments of such several jurisdictions are not to be changed without the previous sanction of government. Reg. XIV. 1807, sect. 7, cl. 1.

The numbers,
names, limits, and
establishments,
not to be changed.

2005. It is at all times competent to government to order the discontinuance of any police jurisdiction, or establishment, which appears unnecessary ; or any alteration therein which is deemed expedient. Reg. XIV. 1807, sect. 7, cl. 2.

Government may
make any altera-
tion.

2006. The city or town constituting with its suburbs the sudder police jurisdiction was to be divided into wards ; each ward to be guarded by a police darogah with a jemadar and an establishment of burkundazes, chokeedars, or other watchmen ; the several darogahs to be under the superintendence of a cutwal, and the whole under the immediate control of the magistrate. Reg. XIV. 1807, sect. 11, cl. 2.

The division of
the sudder police
jurisdiction into
wards.

Watchmen how
to be stationed
therein.

2007. The chokeedars and other watchmen are to be stationed by the cutwal, as the magistrate directs; and are particularly to watch the entrances of streets and passages, places where spirituous liquors are sold, and any places where numbers of people occasionally assemble; or where from any circumstances there is reason for special vigilance to prevent a breach of the peace, or to apprehend the persons by whom it is broken. Reg. XIV. 1807, sect. 11, cl. 3.

Rules for patrol-
ing the wards
throughout the
night.

2008. The jemadars of the several wards with half of the establishment of burkundazes, and the darogahs with the other half of their establishments, are to patrol their respective wards without intermission; the one from sunset until 12 o'clock at night; the other from 12 o'clock at night till daylight. The patrols are to move about with as little noise as possible, that thieves and other disorderly persons may not be apprized of their approach. The patrols of the several wards, and such part of the stationary watchmen as the cutwal appoints, are to be furnished with a singhara or horn, which they are to sound when they meet with robbers or other persons guilty of a breach of the peace, and have occasion to give the alarm to each other, or to the inhabitants of the ward, that they may co-operate for the apprehension of the offenders. The cutwal is to be careful that the stationary watchmen, and the darogahs and their officers, perform the essential duties prescribed in this clause regularly and properly; and is to report to the magistrate every instance in which they are guilty of negligence or misconduct in the discharge of them. Reg. XIV. 1807, sect. 11, cl. 4.

Patrols to be
furnished with
horns.

Duties of the
mahalladar and
mahalladarin of
each ward.

2009. To assist the darogahs in obtaining the earliest intelligence of any robbers, or other offenders, who are concealed or have taken up their residence within their respective wards, the mahalladar and mahalladarin of each ward are to be subject to the orders of the darogah; to whom they are to convey immediate information of any offenders who are found in their respective wards. It is also the duty of the bhatiaras, or other persons in charge of the public serais, and of the ghât manjees, to deliver in to the cutwal's office or to the darogah of the ward, daily reports of the arrival and departure of travellers, and of all persons of suspicious appearance. Reg. XIV. 1807, sect. 11, cl. 5.

Duties of the
bhatiaras, &c.

Private watchmen.

2010. All private watchmen entertained by individuals for guarding their houses, shops, or other premises, within the cutwalee jurisdiction, are required to act in concert with the officers of police in maintaining the peace; and are declared subject to the orders of the cutwal, and of the darogahs of their respective wards, in all matters relative to the police. If such watchmen are found deficient in performing the duties required of them, they are to be dismissed at the requisition of the magistrate, who is also empowered to see that none but proper persons are appointed in their stead. Reg. XIV. 1807, sect. 11, cl. 6.

Charge of police
by go-

2011. Government may grant the full powers of a mofussil police darogah to a tuhseeldar, landholder, or farmer; or may commit the charge of the police to any other person as a temporary arrangement. Reg. XIV. 1807, sect. 17.

Magistrate may
report if he wishes
for such special ar-
rangement.

2012. The magistrates are to report for the information of government any instances within their respective jurisdictions, in which they think it advisable to adopt any special

arrangement under the above provision, stating fully the circumstances which require it and the particulars of the arrangement proposed. Reg. XIV. 1807, sect. 18.

2013. The cutwal and other police officers appointed in the cities and towns are to be guided, in their discharge of the general duties of the police, by the rules prescribed in this regulation for the guidance of the darogahs of police, as far as the same are applicable, and in the special police duties of the cities and towns by the rules in force which relate to the police of the cities and towns. Reg. XX. 1817, sect. 34.

City police to be generally guided by Reg. XX. 1817.

2014. The whole force under each magistrate is to be considered and systematically regulated as a force for the entire district. A list of *all* its members should be kept in English in a book, and should form one of the fixed records of the magistrate's office. Every entry of employment or promotion should be made in this book under the orders of the magistrate himself, or of the officer in charge of a sub-division to whom such authority may be delegated by the magistrate,—with particulars of the caste, parentage, residence and qualifications of the party to whom it refers. On the first week of each quarter the book should be inspected by the magistrate;—a note made of marked good or bad conduct on the part of members of the force;—and orders given, where they may be found to be called for, regarding the distribution of the whole body of the police, so as to preclude the possibility of any part of the force being regarded as attached only to particular thanas, or of the men in any grade being kept too long where they may be likely to form injurious local connections. Govt. Order *W. P.* No. 1994 A, Sept. 11, 1855.

Book to be kept of all police officers,

and examined every quarter ;

and the police officers should be so distributed as to prevent their being regarded as attached to a particular thana.

2015. Means might readily be taken by the several magistrates to have a certain number both of the police sowars and of the thana burkundazes and tuhseel chaprasis trained to the use of fire-arms, so that a magistrate may have some body of men under his immediate command, on whom considerable dependance could be placed in case of any local breach of order. And on application from any magistrate who may state his wish to make the experiment, the lieutenant governor will be prepared to authorise the issue upon indent of muskets to the number of 50 (besides those issued to the jail guard) with ammunition on the same scale as is now given to the jail guard : 20 percussion pistols being also added for the use of picked men of the sowar force,—if they can be conveniently spared from the arsenals at Allahabad, Agra, or Delhi. Govt. Order *W. P.* No. 1994 A, Sept. 11, 1855.

The sowars, burkundazes, and chaprasis, are to be trained to the use of fire-arms.

2016. Proposals for employing a limited number of the district establishments, exercised in the use of fire-arms, for all duties of guard, will be authorised by the lieutenant governor, when a magistrate may have maturely considered the details of such a scheme and may show that he has sufficient means for carrying it into effect. Govt. Order *W. P.* No. 1994 A, September 11, 1855.

Employment of such persons after training.

2017. Where a magistrate may wish to make the experiment of training the burkundazes of the sudder station, the lieutenant governor will authorise the issue of uniforms of the prescribed pattern as in the case of burkundazes on the grand trunk road. Govt. Order *W. P.* No. 1994 A, September 11, 1855.

When burkundazes at the sudder station have been trained, they may be supplied with uniforms.

2018. It is competent to government to authorize any tuhseeldar or tuhseeldars [in the ceded and conquered provinces and in Benares] to exercise the powers vested by the existing

Tuhseeldars.
Powers of darogah may be vested

ent in
tuhseeldars in N.
W. provinces.

regulations in darogahs of police, and to determine the local limits of their police jurisdictions, within which all officers of police, including the thana and village police establishments, are to be subordinate to and subject to the control of the tuhseeldar in his capacity of chief police thanadar. Reg. XI. 1831, sect. 2. Act. XVI. 1854, sect. 3.

Darogahs of po-
lice to be subject
to tuhseeldars.

2019. Whenever any tuhseeldar shall have police jurisdiction under these provisions, every darogah of police hereafter appointed within the local limits of the police jurisdiction of such tuhseeldar, shall be subordinate to, and subject to the control of, such tuhseeldar, in his capacity of chief police thanadar. Act XVI. 1854, sect. 2.

In such cases
rank and functions
how to be settled.

Reg. XX. 1817
is applicable to
tuhseeldars in such
cases.

2020. The darogah and tuhseeldar are competent, with the sanction of the magistrate, to make such disposition of the existing police establishments, in modification of sect. 4, Reg. XX. 1817 [which defines the relative rank and functions of police officers], as is most conducive to the public interests; but, with this exception, the whole of the rules contained in the above regulation are to be held applicable to the tuhseeldars, who are constituted police officers under this regulation. Reg. XI. 1831, sect. 4.

In such cases the
estab-
ay be
oyed in mat-
of police; but
police officers are
not to be employed
in revenue matters.

2021. The tuhseeldars, who are vested with the powers of darogahs under this regulation, are authorized to employ, when necessary, in aid of the regular police establishments, any chaprasis or other persons entertained on their fixed tuhseeldaree establishments; and revenue officers, when so employed, are to be guided in the discharge of their police duties by all the rules in force for the guidance of police officers. But the fixed thana establishments are not to be employed in the collection of the land revenues, or in other revenue duties, except in cases of distraint for arrears of rent or revenue, or such other occasions as by the regulations in force are now authorized. Reg. XI. 1831, sect. 5.

be
publicly notified.

2022. Whenever the government sees fit to carry into effect this arrangement in any district or part of a district, a statement is to be drawn out specifying the number and extent of the several police and revenue jurisdictions, the names and numbers of the officers attached to them, and the head quarters or thanas, and the outposts of the several divisions: this statement is to be drawn out in English and the vernacular dialects, and suspended in a conspicuous place in the cutcherry of the collector and magistrate at the sudder station, and is to be published by proclamation throughout the district. Reg. XI. 1831, sect. 6.

2023. The enforcement of Reg. XI. 1831, in a certain pergunnah or district, or the investiture of the tuhseeldars in certain pergunnahs, or in a whole district, with police powers under these provisions, refers to the locality indicated, and not to the person invested. Any tuhseeldars holding office in those pergunnahs exercise the powers. Tuhseeldars exercising police powers there, when removed to other districts, do not carry the powers with them.

O. No. 78 of vol. 4, *W. P.*

Outposts.

Magistrates may
station at outposts
a portion of the
thana establish-

2024. The magistrates are authorized to exercise the power of stationing any portion of their police thana establishments (not exceeding one-third of the entire establishment) at any chokee, village, ghaut, highway, or other place within the limits of the thana to which such establishments appertain, reporting always the particulars, as well as the grounds of the arrangement, for the information of the superintendent of police. Police officers so

stationed are to be guided by the following rules. Reg. XVII. 1816, sect. 8, cl. 1. Reg. XX. 1817, sect. 6, cl. 1.

2025. Jemadars, burkundazes, and other police officers stationed at outposts, or subordinate chokees, are to act under the control of the darogah or head police officer of the thana, to which they are attached; and are to afford their aid for the prevention of crimes, the apprehension of criminals, and generally for the preservation of the peace, and are to report to the thana all occurrences relating to matters of police, which come to their knowledge. Reg. XVII. 1816, sect. 8, cl. 2. Reg. XX. 1817, sect. 6, cl. 2.

Duties of officers so stationed.

2026. The officers of police stationed at outposts are competent to apprehend, without written charge or warrant, persons found in the act of committing a breach of the peace, or against whom a hue and cry has been raised, or who are detected with stolen goods in their possession, or who are liable to apprehension under the rules in force as proclaimed or notorious robbers, or vagrants, without any ostensible means of subsistence; but no person is to be arrested by the subordinate officers of police, except in cases of the nature above-noticed, unless under the special warrant of the magistrate, or of the darogah of the thana to which the outpost is attached. Reg. XVII. 1816, sect. 8, cl. 3. Reg. XX. 1817, sect. 6, cl. 3.

How far they may apprehend persons without a warrant from the magistrate or the darogah.

2027. Persons apprehended by the subordinate establishments of police are to be forwarded immediately to the thana to which the outpost belongs, accompanied by an explanation of the circumstances of the case, and of the causes which have led to the apprehension of the prisoner. Reg. XVII. 1816, sect. 8, cl. 4. Reg. XX. 1817, sect. 6, cl. 4.

Persons so apprehended are to be forwarded immediately to the thana.

2028. A magistrate is not authorized to call upon a zumeendar to provide a building for the residence of police officers stationed upon his estate under the above rules. Const.

Landholders are not obliged to provide houses for such outposts.

2029. Magistrates, who have guard boats under them, are required to report annually what services have been rendered by the boats employed under them, that, whenever it appears they are useless at any station, they may be reduced or transferred to some other. Such reports are to state whether the boats have been instrumental in apprehending dacoits; whether owing to their vigilance that crime has in any instances been prevented; and generally whether robbery in the neighbourhood of their stations has comparatively ceased or diminished, from the dread of pursuit excited in the minds of the evil-disposed by their presence and known activity. C. O. No. 41 of vol. 1.

Guard boats.

Annual report to be furnished regarding.

SECTION II.

OF THE RELATIVE RANK AND GENERAL FUNCTIONS OF POLICE OFFICERS.

General duties of darogahs, and their control over the subordinate thana officers.

2030. The darogahs are to exercise a general control over the mohurirs, jemadars, and burkundazes attached to their respective thanas; it is the duty of a darogah, or other officer of police in charge of a thana, to conform to all instructions he receives from the magistrate, to whom he is subordinate; to preserve the peace within the limits of his jurisdiction; to report to the magistrate all occurrences connected with the police which come to his knowledge; to prevent, as far as possible the commission of all criminal offences; to discover and apprehend offenders; to execute process and obey all orders transmitted to him by the magistrate; and to perform such other services as are prescribed in the regulations. Reg. XX. 1817, sect. 4, cl. 1.

Rank and special duties of the mohurir.

2031. The mohurir is to be considered the second officer at a thana; and, in the absence of the darogah from his station, is to exercise the powers vested in that officer by the provisions of this regulation. It is the special duty of the mohurir to preserve the records of the thana, and to write the reports and other papers under the direction of the darogah. Reg. XX. 1817, sect. 4, cl. 2.

Rank and special duties of the jemadar.

2032. The jemadar is to be considered as the third officer at a thana, and in the absence of the darogah and mohurir from the thana station, is to exercise the same powers as are vested in the darogahs by the provisions of this regulation. The jemadars, whether stationed at the thanas, or at outposts, are to act under the orders of the darogah of the division, and are to see that the burkundazes are in attendance at their posts; that their arms and accoutrements are kept in a state of efficiency; and that all prisoners and property brought to the thana are duly guarded during the time they remain under the custody of the police burkundazes attached to the station. Reg. XX. 1817, sect. 4, cl. 3.

Jemadar may have special powers.

2033. First class jemadars may be invested with the powers of a darogah by government on the special recommendation of the magistrate. C. O. Govt. W. P. No. 1849 A, August 28, 1855.

Police officers generally to obey the orders of the superintendents of police, and of the joint and assistant magistrates.

2034. The officers of police are required to aid and support the superintendents of police, and the joint and assistant magistrates, to whom they are respectively subordinate, in the execution of any process issued by them under their official seals and signatures; also to furnish those officers with every information required from them, as well as generally to obey all orders issued to them by those officers, on pain, in case of neglect or failure, of being fined, suspended, or dismissed from office, according to the provisions established by the general regulations for the punishment of offences of that description. Reg. XX. 1817, sect. 4, cl. 4.

Seal to be used by police officers.

2035. All cutwals and police darogahs are to use a brass seal of office, an inch in diameter, and made after the form described in the margin, the name of the cutwalee or thana, and the name of the city or zillah in which it is included, being engraved on the surface of the seal. Reg. XX. 1817, sect. 5, cl.

Thana
of Mhow
Zillah
Tirhoot.

2036. The police burkundazes are to wear brass badges, engraved with the name of the police station, and of the district in which they are employed; and are to be armed with a spear, a sword, and a shield; or with a matchlock, sword, and shield; or with a spear and matchlock; as circumstances render expedient: they are also to be uniformly dressed in such manner as is prescribed by the superintendent of police. Reg. XX. 1817, sect. 5, cl. 2. arms, and uniform.

SECTION III.

OF CONCURRENT JURISDICTION OF POLICE OFFICERS.

2037. Whenever a darogah receives intelligence of any murder, gang-robbery, or other heinous crime, having occurred within his jurisdiction, the perpetrators of which have not been apprehended, he is to despatch immediate information of the occurrence to the neighbouring police darogahs, both in the district in which his thana is situated, and in the adjacent districts. Reg. XX. 1817, sect. 22, cl. 1. Intelligence of heinous crimes to be sent to neighbouring thanas.

2038. The darogahs and other police officers are empowered, either under the warrant of the magistrate or without such warrant, to pursue persons charged with the crimes above-mentioned into the jurisdiction of other darogahs, whether subject to the same or any other magistrate; and the magistrates, darogahs, police officers, landholders, farmers, gum-ashtas of villages, cultivators of land, and all other persons having authority or residing in the jurisdiction into which the offenders are pursued, are required to afford every assistance in their power to the pursuing officers for the apprehension of the offenders. Reg. XX. 1817, sect. 22, cl. 2. Police officers may pursue offenders into thanas or zillahs.

2039. It is to be understood, however, that this concurrent authority is to be exercised by the police officers only in those cases in which the crime has been committed within their own respective jurisdictions; or, in the event of the crime having been committed in any other jurisdiction, when the offender is actually within their jurisdiction at the time the charge is preferred to them; and it is not lawful for the darogah of one zillah or jurisdiction to issue a warrant for the apprehension of an offender, being or residing in another zillah or jurisdiction at the time of a complaint being preferred, for any crime not committed within the limits of his own jurisdiction. In such cases the complainant must apply in the first instance to the magistrate of the zillah, or to the darogah of the jurisdiction, in which the crime or misdemeanor has been committed, or in which the offender resides or is found. But should the complainant first prefer a written application to the darogah of another jurisdiction, such darogah is to record in his diary the name of the complainant, the nature of the charge, and the date on which the complainant has been referred to another darogah. The date and ground of such reference is also to be endorsed upon the application to be returned to the complainant. Reg. XX. 1817, sect. 22, cl. 3. But this concurrent authority is to be exercised only when the offender was in the jurisdiction at the time the charge was preferred.

to proceed when he apprehends offenders without his jurisdiction.

2040. Whenever the police officers employed under one magistrate apprehend offenders in the jurisdiction of another magistrate, in virtue of the powers vested in them by the preceding rules, they are immediately to deliver to the darogah of the police jurisdiction, in which the offenders are apprehended, a list of their names, and a statement of the crimes and misdemeanors with which they are charged; and the latter darogah is immediately to forward such list and statement to the magistrate to whose authority he is subject. Reg. XX. 1817, sect. 22, cl. 4.

SECTION IV.

OF APPOINTMENT AND REMOVAL.

to keep a register

2041. A general register of all police establishments (whether permanent or temporary) which are entertained at the charge of government, is to be kept up by the superintendents of police for their respective jurisdictions, exhibiting the description, strength, distribution, and expense of all such establishments, entertained within the provinces dependent on the presidency of Fort William. Reg. XVII. 1816, sect. 2, cl. 1.

to descriptions of police.

2042. The superintendents of police are regularly to transmit to government, with their annual police reports, or as soon after the transmission thereof as is practicable, an abstract exhibiting a comparative view of the strength and expense of all descriptions of police entertained during the two preceding years in the several districts situated within their respective jurisdictions, together with a separate address, explanatory on the one hand of any temporary or local increase in such establishments which circumstances have rendered necessary, or suggesting on the other any further reductions in the strength of those establishments which the ameliorated state of the police, the progressive introduction of subsidiary police arrangements, or other circumstances, appear to admit. Reg. XVII. 1816, sect. 3.

to furnish the superintendent with required information, and to conform to his suggestions.

2043. In order to enable the superintendents to furnish such annual report, the magistrates are to supply any information which they require, and are to conform to any suggestions of those officers in respect to the organization and management of such establishments, which are consistent with the tenor and spirit of the regulations. Reg. XVII. 1816, sect. 5.

The appointment removal of police officers in the

2044. The magistrates are to exercise the power of appointing darogahs and other subordinate officers to the several police stations subject to their control; of removing them from one station to another; and of suspending and dismissing them from office in consequence of neglect, misconduct, or incapacity. Reg. XVII. 1816, sect. 7, cl. 1.

subject to the control of the superintendents in some districts.

2045. But in districts, in which tuhseeldaree establishments are maintained subject to the authority of the collectors, the appointment and removal of police officers rest with the magistrate, subject to the orders of the commissioner of circuit, or other officer vested with the powers of superintendent of police, whose decision is final, unless the government

reason to issue special orders on any case which may be brought to its notice.(a) Reg. XI. 1831, sect. 8.

2046. The magistrates are required to record upon their proceedings the grounds upon which any native officers are removed by them under the above provisions; and to select proper persons to fill all vacancies in the stations of such officers; and to continue in office the persons appointed, whether by themselves or by their predecessors, whilst they discharge the duties assigned to them with diligence and integrity. Reg. XVII. 1816, sect. 7, cl. 8. mo
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2047. No person is to be appointed a darogah without giving security for his appearance in the amount of 1000 rupees, himself in 500, and two responsible persons in 250 each. *Beng. Reg. XXII. 1793, sect. 6. Ced. Prov. Reg. XXXV. 1803, sect. 24.* Security
taken from daro-
gahs;

2048. Under the orders of government, the foregoing provision is not to be put in force in Bengal. C. O. Sup. Pol. L. P. No. 18 of 1845. but not to be
required in Bengal.

2049. Persons past the prime of life are not to be admitted into the police force except when some peculiar advantage is to be gained from the appointment. C. O. Sup. Pol. L. P. No. 18 of 1840. Persons appoint-
ed must be ef-
ficient.

2050. The darogahs are not to nominate individuals to supply vacancies in their subordinate establishments, except in instances in which they are especially directed to do so by the magistrate. Reg. XX. 1817, sect. 3, cl. 2. Darogahs may
not nominate to su-
bordinate appoint-
ments.

2051. The magistrate is to furnish to each police officer on his appointment a written document, under his official seal and signature, specifying the station to which the officer is appointed, and requiring him to perform the duties of it in conformity with the regulations. Reg. XX. 1817, sect. 3, cl. 3. Sunnud to be fur-
nished to each offi-
cer on appoint-
ment.

2052. When sending up to the superintendent of police the nomination of a police officer for approval, the magistrate is to state whether he is related to or connected in any way with the omlah of his own or of the sessions court. C. O. Sup. Pol. L. P. No. 19 of 1840. Relationship of
the person nomi-
nated to the omlah
to be noted.

2053. Magistrates are to appoint police officers only to act, until they have obtained the sanction of the superintendent; and a report on the subject is to be invariably sent without delay for the orders of that officer. C. O. Sup. Pol. L. P. No. 20 of 1838. Report of appoint-
ment to be forward-
ed for confirma-
tion.

2054. The magistrate is to send to the superintendent of police, without delay, a report for confirmation whenever he thinks it expedient and proper to dismiss any police officer above the grade of burkundaz. C. O. Sup. Pol. L. P. No. 1 of 1838. Report of dis-
missal to be for-
warded for confir-
mation.

2055. Monthly returns are to be furnished by the magistrate to the superintendent of police of the dismissals and appointments of police officers in the form No. 6 of appendix F of _____
appointments.

(a) It was formerly held by Const. No. 786 that this provision was applicable to the whole of the ceded and conquered provinces; but it seems, from a note to that Const. in Mr. Buckland's edition, that the Calcutta court held on the 11th July 1858 that it was restricted to those districts in which the tihseeldaree establishments are maintained subject to the authority of the collectors, referred to in the preamble of the regulation.

2063. As a specific provision is made by the above clause for the punishment of neglect of duty by officers of police, the magistrate is restricted in such cases to the limitation of punishment therein defined; but if any distinct misdemeanor beyond neglect of duty is established, the case of course falls within the magistrate's discretion under the general powers vested in him by sect. 19, Reg. IX. 1807. Const. No. 244. C. O. Sup. Pol. *L. P.* No. 8 of 1840.

But the fine cannot be greater; and he cannot inflict imprisonment, except in case of a distinct misdemeanor.

2064. A magistrate cannot fine a police officer for neglect of duty without judicial enquiry and the record of evidence. Reports *L. P.* 1856, part 1, page 907.

Fine cannot be inflicted without judicial enquiry.

2065. Dismissal from office is not to be resorted to as a punishment in the police, excepting for offences of a serious nature, or continued acts of neglect, inefficiency, and misconduct.(a) The magistrate is to keep a register, in the form No. 20 of appendix B, inserting therein the minor punishments he has occasion to impose upon his police officers. These should be reprimands, fines under the above provisions, and temporary deprivation of office not exceeding 6 months. If it appears that a repetition of these minor punishments is insufficient to produce activity, regularity, or a proper attention to their duties on the part of any officers, dismissal must then take place; and the papers of the case, in which this last punishment is ordered, are invariably to be sent to the superintendent of police, together with an extract from the register shewing to what punishments, and for what offences, the dismissed officer has been previously subjected. In all cases where punishments are imposed on a police officer, the reasons for them, and the mode of conduct he should in similar cases adopt, are to be pointed out to him in plain but courteous terms. Of course

Remarks of the superintendent of police on the punishment of police officers.

The reasons of punishment are always to be explained.

(a) "The greatest bane to the force at present, and the bar to the entry into it of respectable men, is the extreme uncertainty of the tenure of office, and the degradation to which the officers have been in too many instances subjected by dismissal, heavy pecuniary fines, and imprisonment, in cases which really did not call for such severe measures. The first step to restore to the police some degree of self-respect is to abstain from all punishments, which degrade the feelings of those punished without producing any good effect on their fellow officers. Dismissal has been so common that magistrates have almost ceased to consider it as forming any kind of disqualification for future employment. It has lost its effect as a punishment or example, and beyond a temporary degradation is not held in terror by those holding offices in the police."—C. O. Sup. Pol. *L. P.* No. 16 of 1840.—With this order the superintendent circulated a register (subsequently continued) of police officers "dismissed for offences which would seem to render them unfit for future employment without great attention on the part of the local magistrates to the circumstances under which they consider them qualified for a further trial." This register is not intended as a declaration that the persons entered therein are incapable of again serving the government in any capacity; but to enable the magistrates to exercise a sound discretion in the re-nomination of those persons: if, therefore, a magistrate desires to employ any of those persons, he is to state his reasons for selecting him in preference to others, upon whose character there is no slur. Again, in C. O. No. 3 of 1845, the superintendent observes that "the increase made to the salaries of all darogahs, and the creation of two higher grades, which all who conduct themselves properly may reasonably expect to gain, must have a great effect in raising the character of the police, and procuring more respectable persons as candidates for vacant situations; but much of the benefit to be derived from this measure must also depend on the treatment shown to the officers by their immediate superiors. The police officers should not be harassed by fines, and summonses to appear before the magistrate on petty or insufficient occasions; errors should be pointed out to them in terms not likely to wound their self-respect; and whilst all attempts at oppression or corruption, for which there can be now no excuse, are checked, police officers should be encouraged in the proper performance of their duties by a degree of courtesy and consideration evinced on the part of the magistrate towards all those who honestly endeavour to carry out the objects of their appointment." The Court of Directors concur in these observations, and remark that "heavy fines imposed upon native officers whose allowances are barely, if at all, sufficient for their subsistence, must have the effect of driving them to acts of corruption and extortion; and the disregard of their just rights and reasonable feelings by their official superiors must degrade them in their own estimation, and in that of the public, and must deter men of respectable character from holding situations in which they are exposed to such hardships and disgrace."

cases sometimes occur, where immediate dismissal without any intermediate punishment must follow the offence. C. O. Sup. Pol. *L. P.* No. 16 of 1840.

Distribution of rewards.

2066. As a general rule rewards ought to be given only in very particular instances to the officers of police, who should be induced to look forward to promotion for acts of good conduct. In cases where great personal courage, vigilance, or tact is exhibited, a report should be made to the superintendent of police before the admission of the officer to a reward. C. O. Sup. Pol. *L. P.* No. 13 of 1842.

Register to be kept by the magistrate of police officers deserving of promotion. *L. P.*

2067. The magistrate is to keep in a book in the English and native languages a register of police officers deserving of promotion, in the form No. 17 of appendix B, in order to hold out as an encouragement to them, that good conduct on their part will be noticed and meet with reward. A similar register is kept by the superintendent of police ; and the magistrate is to forward to him for record therein a transcript of every entry which he makes in his register. The superintendent wishes that all promotions in the police should be made from amongst those entered in these registers as deserving of reward. C. O. Sup. Pol. *L. P.* No. 2 of 1840.

Book of character to be kept of certain officers, in offices of commissioner, and magistrate.

2068. The following rules were passed in the Western Provinces with a view both to an efficient control over the executive and ministerial establishments, and to the proper encouragement and protection of the officers serving on them, that a permanent record, might be maintained and employed for systematic reference of all orders and proceedings of superior authorities, relating to the character and conduct of such officers. I. Character books shall be prepared and kept up in the offices of the commissioners of revenue and police, with entries for the clerks of the English office drawing rupees 50 and upwards, for serishtadars and record-keepers, and for officers of other grades, who may draw a salary of the above amount ; and in the offices of the magistrates and collectors, to include officers of the same grades, and scale of pay, with the addition of the jail darogahs, and foudaree and revenue nazirs ; as also of the tuhseeldarees and thanas in each district, to include tuhseeldars, naib tuhseeldars or peshkars, thanadars, mohurirs, and jemadars. Two books will be kept by the magistrates and collectors, one for the sudder office and one for the mofussil offices. II. The books to be of English paper, and strongly bound for permanent record. All entries will be made either by the head of the office, or by the officer in charge of a sub-division ; entries made in such cases for a sub-division (within such limits of penalty as may be allowed, in each instance, in the discretion of a magistrate and collector) are to be shown monthly to the latter officer, and to be countersigned by him at the close of the month, in attestation of their having been inspected by him. III. A page will be left blank in regard to each officer, for the entry in the first instance, and afterwards yearly, of any of his connections, who may be employed in the same district. The entries on the page following, will be according to the form annexed.(a) Two or three further pages will be

Entries to be made by head of office.

A page to be left for entry of connections.

(a)

TOORAB ALLEE

is the son of a rumeendar of the _____ district, vide letter of _____ to the collector, dated the _____. He was appointed peshkar of the _____ tahseel by Mr _____ in _____ ; he was appointed officiating tuhseeldar of _____ by _____

left blank, in each instance, for additional entries. IV. The brief description of the previous service of the officer in any of the higher grades, which is to be placed at the head of the entries, as shown in the form, should be taken from each officer concerned, who will be held strictly responsible for its correctness. In the columns marked for the purpose, a brief record will be made of every order or proceeding hereafter issued conferring any marked reward, or noticing with special credit, the conduct of the officer in any particular case. The nature only of the order or reward will be noted, with a distinct reference to the proceedings of the case itself. In those proceedings it will invariably be mentioned that the appropriate entry has been directed to be made in the character book. V. All such notices will be in English, excepting where a sub-division may be under a native deputy collector and joint magistrate, who will, in that case, record the notice in his own language. All such notices will be signed in full by the officer responsible for them at the time when they are made. VI. The record will, ordinarily, be simply a note of the purport of the order of approbation or censure, expressed so as to enable the original record to be traced without delay. In cases in which the head of an office, called upon to testify to the character of any of the officers included in the register, may have clear and strong ground for certifying the particular merits and efficiency of such officer, when these may not be apparent on the face of the entries, or in which, on giving over charge of the office, he may, from the like nature of the entries, think it just to leave such a record, he will be at liberty to add a note stating his opinion generally to that effect, and the circumstances on which it is founded. Otherwise, the record will be only of orders of proceedings actually held in respect to each officer, as occasion may arise. VII. All orders of promotion, and of suspension or dismissal, will be entered as indicated in the annexed form. Resignations of office, connected with no cause of censure on the conduct of the officer, may be entered in a separate foot note. VIII. If any order, whether of approval or censure, should subsequently be overruled, or altered by superior authority, the circumstance will be carefully noted by a red ink entry, written across the original entry. IX. On all occasions of the promotion, suspension, or removal of an officer, an extract from the character book, comprising all its entries, will be attached to the proceeding recorded in the native office and will form a necessary part of the record, when submitted, as may be requisite under the established rules, to higher authority. X. No officer who has served in one district, shall obtain employment in another district, without an extract from the character book being filed with the proceeding of appointment, and on his appointment in the new district taking place, the extract will be incorporated in the character book of that district. Such extract shall be claimable by the officer as of right and shall be given without expense, under the signature of the head of the office. But the extract shall be complete, so as to comprehend all entries, whether of approval or the reverse. The prac-

Description of previous services.

Entry of rewards or commendation.

Entry to be in language of head of office, and signed.

Entries to contain reference to records.

Head of office may add notes on general character.

Orders of promotion, suspension, or dismissal.

If order be overruled.

Extract from character book to be with orders.

Office taking employment in another district.

Extract claimable by each officer as of right.

and confirmed in the substantive appointment by the commissioner, in his letter No. _____ dated _____. He has _____ landed _____ property in the _____ District. *N. B.* Note, on the page left for that purpose, any relatives employed in the district to which the register relates, and any period of discontinuance of the government service exceeding six months, with the reason for relinquishing it at that time.

Note.—On this half page enter notices of approbation and rewards, and orders of promotion.

Note.—On this half page enter notices of censure or punishment, including suspension and dismissal.

Separate certifi-
not to be

Record may be
kept of inferior
officers.

Heads of offices
in other districts
may obtain infor-
mation.

Commissioners
to examine these
books, and report.

Rules for promo-
tion of darogahs to
higher grades.

Encouragement
to be given to young
men who have been
educated.

In the case of

tice of issuing commendatory parwanas, or separate certificates of good character, in the case of officers upon establishments, and of grades, for which the registers are to be formed, is strictly prohibited from the date on which these orders will have effect. Opinions as to peculiar ability and good character may be recorded on the extracts, in cases in which they may be thought to be specially called for, under the provisions contained in rule 6. XI. Officers will be at liberty to make a record of the character of persons in the lower grades, as of duffadars and burkundazes, in cases which they may regard as of highly marked good conduct, meriting such a distinction. Where such a record is made, it should also be noted whether the party has received any, and what, extent of education. XII. Heads of departments in other districts, desirous to give employment to officers of approved good conduct, will be at liberty to refer for any information which can be supplied from these registers in any part of the country in which they are kept up. XIII. It will be the duty of commissioners, on their annual tours, to see that the present rules are regularly and carefully observed by the several officers responsible for their execution, and the subject will be specially mentioned in their yearly police reports. Govt. Order *W. P.* 244 A, January 23, 1855.

2069. The total number of 1st and 2nd grade appointments at the disposal of the government are to be held available for such darogahs as deserve promotion, wherever they may be posted, and without reference to the number of officers of the same grade in any one province or division. A register of all darogahs of the two senior grades is to be kept by the secretary to government; and all vacancies occurring in each division through the death, suspension, degradation, or dismissal of officers in those grades are to be reported by the commissioner of circuit without loss of time. He is to furnish annually with his police report two statements in the forms A and B [Nos. 18 and 19, of appendix B] showing what officers he considers entitled to promotion; and the order in which they should, in his opinion, be promoted; and each year's lists should be made to supersede those previously submitted. As vacancies occur, promotions are to be made by the government from the record thus kept of the returns from the several divisions. In this manner a more systematic plan of promotion will be observed; and darogahs will be promoted not only for single instances of good conduct, or because others of equal desert have been less prominently noticed, but on a general view of their past services and merits. Particular attention is called to the importance of obtaining the services of educated men on the occasion of all vacancies in the police. C. O. Govt. Bengal No. 8, February 17, 1854.

2070. Young men who have had a good education at the government and other institutions would gladly enter into the police if encouragement were held out to them. The admission of this class into the police would not only add to its efficiency, but also to the integrity of the body; and young men of this class should be encouraged to come forward as candidates for employment in the police by giving them *cæteris paribus* the preference over others. C. O. Sup. Pol. *L. P.* No. 6 of 1850.

2071. Magistrates in the Western Provinces are to keep the strictest watch over all re-claimed or surrendered Budhuks who may be employed in their police, and if any of these men shall at any time abscond, the magistrates will immediately report the circumstance to

the assistant commissioner for the suppression of dacoity; and if it shall be necessary to discharge any of them, the magistrates will make them over to that officer for such orders as he may give. Govt. Order *W. P.* No. 3395, August 11, 1845.

2072. The superintendents of police are competent, in the same manner and to the same extent as local magistrates, to impose fines upon any cutwal, police darogah, or other subordinate officer of the police establishments stationed within the limits of their respective jurisdictions. Reg. XVII. 1816, sect. 11, cl. 1.

Power of superintendent of police to fine police officers.

2073. The superintendents of police are likewise competent to suspend from office any cutwal, darogah, or other subordinate officer of the police of their respective jurisdictions, during any inquiry which they judge proper to institute in regard to the conduct of such officer, and also for neglect, or failure to furnish information, or to obey orders issued to them by the superintendents of police. Reg. XVII. 1816, sect. 11, cl. 2.

and to suspend them ;

2074. Whenever the superintendents of police deem it necessary, in the discharge of their duties, to fine or suspend any such officer, they are to communicate an extract from their proceedings, with a copy of the order passed by them to the local magistrate, who, in pursuance of cl. 1, sect. 5, Reg. III. 1812*, is to proceed to realize the fine in the same manner as if it had been imposed by himself, or to carry into effect the superintendent's order of suspension, and to supply the vacancy occasioned thereby. Reg. XVII. 1816, sect. 11, cl. 3.

and he is to certify such sentences to the magistrate for execution.

* *v. para.* 1971.

2075. The superintendent of police is fully competent, on sufficient ground, to remove of his own accord any of the officers, whom he is competent to remove on reference from the magistrate. Const. No. 62.

Superintendent of police may remove officers of his own accord.

2076. All appeals from the awards of magistrates dismissing or suspending police officers for breach of duty as such, lie exclusively to the commissioners (superintendents of police), who are responsible for the good order of the police. But this does not remove trials of police officers committed for bribery from the session judge to the superintendent of police; and appeals in cases of that nature lie to the former. C. O. No. 240 of vol. 2. Const. No. 1134. And the commissioner of circuit cannot take up an appeal from a police officer who has been fined for neglect of duty. Reports *L. P.* 1856, part 1, page 907.

Appeal from awards of magistrates dismissing or suspending against police officers lie to the superintendent ;

2077. The appeals of parties seeking redress from orders of magistrates dismissing them from their situations, such orders not being part of the sentence passed in any criminal trial, cannot be heard by the session judge, but lie under the law to the commissioner. C. O. No. 35 of vol. 3.

and cannot be heard by the session judge.

2078. As the terms of sect. 8, Reg. XI. 1831* include all police officers of whatever denomination without reference to the amount of their salary, appeals from the orders of the magistrate may be received in districts of the ceded and conquered provinces, in which *tuhseeldaree* establishments are maintained subject to the authority of the collectors, by the commissioner of circuit from any police officer, whether his salary is above or below the sum of ten rupees. Const. No. 907. C. O. No. 142 of vol. 2. See note to Const. No. 907 in Mr. Buckland's edition.

All officers may appeal without reference to the amount of their salary.

* *v. para.* 2045.

The session judge cannot interfere with the orders of the magistrate regarding the appointment or removal of police officers.

2079. It is not competent to a session judge to interfere with any order passed by a magistrate, or joint magistrate, regarding the appointment, suspension, or removal of any police officer, the revision of which is entrusted by section 4 of this Act to the superintendent of police. Act XXIV. 1837, sect. 5.

The orders of the superintendent in are not

2080. The orders of the superintendent of police in regard to the appointment, suspension, or removal of a police officer of a magistrate, or joint magistrate, passed under the above provisions, are not open to revision by the nizamat adawlut. Act XXIV. 1837, sect. 6.

lut.

Appeals from officers, employed in both the revenue and police departments, lie to commissioners.

2081. Appeals from orders for the removal of police officers on the establishment of the magistrate and collector, who are also employed in the revenue department, lie to the commissioner, and not to the session judge. So also, in regard to the removal of native officers in whom revenue and police functions are combined, the appeal would lie in either case to the commissioner; unless a regular criminal trial has been held, in which case it would lie to the session judge. C. O. No. 177 of vol. 2. *W. P.*

Appeals may be forwarded by dawk;

2082. Commissioners may receive and act upon petitions from suspended officers forwarded by the dawk, provided they are written on stamp paper. Const. No. 344.

or may be presented to the magistrate, who is to present them with of the case, if written on stamp papers and

2083. Police officers dissatisfied with the orders of a magistrate are permitted to present their petitions of appeal to the magistrate, if written on the proper stamp paper; and, if presented within the usual period allowed to appellants, the magistrate is bound to forward the appeal with the papers of the case for the orders of the superintendent of police. In case the officer suspended or dismissed does not present his petition of appeal to the magistrate within the period allowed, the magistrate is to refuse to accept it, and is to refer the officer to a personal appeal at the office of the superintendent. C. O. Sup. Pol. *L. P.* No. 20 of 1838.

If the appeal is by dawk accompanied by copies of the proceedings appealed against.

2084. If the course prescribed in the above order is not adopted by police officers appealing, they must forward to the superintendent with their petitions of appeal copies of the proceedings ordering their dismissal, without which their petitions will not be attended to. One of the two courses referred to must be followed. C. O. Sup. Pol. *L. P.* No. 24 of 1844.

Facilities to be given for personal attendance of appellant during the hearing of his appeal.

2085. When appeals are received by dawk, and no one is present at the station of the commissioner to attend at their hearing, they may, without objection, be taken up and disposed of as the commissioner may find to be most convenient, with reference to the other business which demands his attention. But where parties interested in an appeal, whether as principals or agents, are in attendance, the hearing should invariably be held by the commissioner in his public office, with a sufficient previous notice of the day fixed by him for the purpose, so that those concerned may have full facility for appearing, and for making such statements as they may wish to offer in support of their applications. The order on the appeal should also be passed in their presence, and personally explained to them by the commissioner. C. O. Govt. *W. P.* No. 49A, January 11, 1854.

Police officers

2086. If the darogah of a jurisdiction, or any officer under his authority, is guilty corruption, extortion, or oppression, or commits any act repugnant to this regulation, he

is liable to be committed^(a) by the magistrate to take his trial for the same before the sessions court, or to be prosecuted for damages in the civil court, at the option of the party injured. *Beng. Reg. XXII. 1793, sect. 22. Ben. Reg. XVII. 1795, sect. 20. Ced. Prov. Reg. XXXV. 1803, sect. 21. C. O. No. 35 of vol. 1.*

2087. A magistrate is competent, whenever he sees reason to suspect that any charge of corruption or extortion preferred against his police officers is false and unfounded, to call on the person preferring the charge to give security for his attendance until the final decision of the case. *Const. No. 731.*

In such cases the prosecutor may be required to give security for his attendance.

2088. Whenever the local government, or the head officer of a department or office under government, is of opinion that there are good grounds for making a public enquiry into the truth of any imputation of corruption, extortion, embezzlement, or other malversation, committed at any time during tenure of office by any ministerial or police officer subject to the jurisdiction of the courts of the East India Company, and subordinate to such government, or employed in such department or office as the case may be, it is lawful for such government, or any such head officer as aforesaid, to prosecute such officer on the part of government in a criminal court, or to nominate some person to conduct such prosecution. And it is also lawful for such government, or head officer as aforesaid, in their or his discretion, to undertake on the part of government the prosecution in a criminal court of any such charge as aforesaid, which may be brought by an aggrieved private party against any such ministerial or police officer, and such prosecutions as aforesaid are not to be barred or affected by reason of the party prosecuted having ceased to be in the service of government at the time at which the charge may be brought against him. *Act XXXII. 1852, sect. 1.*

Prosecution of any subordinate officer on the part of government upon charges of corruption, &c.

Prosecution may

party.

Not barred by service having ceased.

2089. Provided always that no collector, magistrate, nor head of an office in the salt, abkaree, or customs department, under the grade of commissioner, is to commence or undertake a prosecution under this Act, until he shall have obtained the permission of the court, board, or officer, to whom he is immediately subordinate, to institute the same. *Act XXXII. 1852, sect. 2.*

Prosecution not to be commenced without sanction of board, or other controlling authority.

2090. Where a deputy magistrate committed a police officer on the prosecution of government without the commissioner's sanction, and the judge returned the case with directions that such sanction should be obtained, and the prisoner was afterwards re-committed on such sanction and tried; it was held that the proceedings were regular. *Reports W. P. 1855, part 2, page 81.*

2091. No collector, magistrate, judge, or other officer, who may prosecute any officer under this Act, or cause such prosecution to be instituted, or who may conduct any preliminary investigation into the conduct of such officer connected with such prosecution, nor any of his deputies, assistants, or subordinate officers, is to act as judge in any such prosecution. *Act XXXII. 1852, sect. 3.*

Officer in prosecution, or his assistants, not to act as judge.

(a) A magistrate is of course competent to pass sentence of punishment on his own authority, to the extent of the powers vested in him by regulations passed subsequently to those cited above, if he consider such punishment adequate to the degree of criminality of the accused. See *Const. No. 287.* The subject of corruption, &c. will be found more fully treated of in a subsequent part of the work.

for leave
of absence; the ap-
pointment and sa-
lary of persons offi-
ciating.

2092. Any police darogah, mohurir, or jemadar, applying for leave of absence, is to name an individual for the approval of the magistrate to officiate for him during his absence; and the person, who is appointed to act, is to receive, during his absence, the entire allowances of the police officer for whom he officiates, or such part thereof as the magistrate, in each instance, judges it proper to fix. The burkundazes are to submit their applications to the magistrate through the darogahs; and the persons nominated to act during their absence are to receive the entire salaries of the individuals for whom they officiate, or such part thereof as is fixed by the magistrate. In the event of the absentee's exceeding the period of his leave, the darogah is to report the circumstance for the orders of the magistrate. Reg. XX. 1817, sect. 7, cl. 1.

Acting darogah
to receive full sa-
lary.

Suspended daro-
gah, if acquitted,
may be paid back
salary.

2093. Whenever a police darogah is suspended from office, and it is found necessary to appoint an acting darogah, the latter is to receive the full salary of the office whilst he is so employed. If the darogah is acquitted of the charge against him, the magistrate, or sessions court, before whom the trial is held, is to report for the consideration and orders of government, whether the darogah appears to be entitled to receive the whole or any part of the salary of his office for the time of his suspension. C. O. No. 51 of vol. 1.

Arrangement to
be made, if the da-
rogah of one thana
is put in tempora-
ry charge of an-
other during the
suspension of the
darogah of the lat-
ter.

2094. The above order is not strictly applicable to the case of a person holding the office of a police darogah, and receiving his salary as such during his temporary appointment to the charge of another contiguous thana, while the darogah of the latter is under suspension. But if any additional allowance appears proper, in consideration of the additional duty, it should in the first instance be paid out of the salary of the suspended darogah, subject to the provision, given above, for cases of ultimate acquittal: and in such cases the magistrate appointing the officiating darogah is to regulate the amount of the allowance to be received by him, according to the extent of the trust, and the additional duty to be performed. C. O. No. 198 of vol. 1.

Extra expenses
occasioned by delay
of magistrate to
obey orders of re-
storation.

2095. Any extra expenses occasioned by the neglect of a superior court's order, directing the restoration of a native officer to office, are to be retrenched from the allowances of the person by whose fault the restoration has been delayed after receipt of orders to that effect. C. O. No. 254 of vol. 1.

Police officers of
one zillah are not
to be arrested in
another while in the
execution of their
duty.

2096. The magistrate of Burdwan was censured for arresting a police darogah of Beerbhoom, while in the execution of his duty in serving a warrant issued to him by the magistrate of the latter district; and was informed that he should have postponed requiring the darogah's attendance, until he had completed the duty on which he was deputed by his immediate superior. Const. No. 851.

personal atten-
dance of police offi-
cers, are to be serv-
ed through the ma-
gistrate.

2097. Writs for the apprehension of the person, or for requiring the personal attendance of police officers under civil processes, are to be issued through the magistrate. This rule does not of course apply to notices or proclamations not requiring personal attendance, or to processes which give the party the option of appearing in person or by vakeel. C. O. No. 203 of vol. 3. L. P.

2098. The magistrates in the lower provinces are authorized to remit by collectorate drafts the proceeds of property belonging to deceased police officers when dying at a distance from their homes. C. O. Sup. Pol. *L. P.* No. 16 of 1844.

police
be re-
collectorate
drafts.

2099. A police darogah especially deputed to make local enquiries in a thana not immediately under him and distant from his own, may be allowed travelling charges; but it is to be distinctly understood that this indulgence is not to extend to cases in which darogahs follow criminals into other thanas than their own in the ordinary course of duty. On extraordinary occasions, however, of the latter description where darogahs have to pursue criminals for days together through one or more districts, the superintendent is authorized to pass their *bond fide* travelling expenses. Great caution is to be observed in the deputation of darogahs to other thanas, and such a measure should be adopted only in peculiar and important cases. C. O. Sup. Pol. *L. P.* No. 3 of 1846.

Travelling allow-
ance of police
darogahs.

thanas.

SECTION V.

OF THE DEPUTATION OF BURKUNDAZES TO THE SUDDER STATION.

2100. Whenever a burkundaz is despatched to the magistrate's court, the jemadar, or other police officer, by whom he is despatched, is to deliver to him a certificate, showing the name of the burkundaz, and the date and time of his despatch, agreeably to the first three columns of the form No. 1 (No. 11 of appendix C). Reg. XX. 1817, sect. 7, cl. 2.

certificate

2101. On the arrival of the burkundaz at the sudder station, he is to proceed to the nazir of the foudaree court, who is to insert in the fourth column of the paper the date and hour of his arrival; and, in the event of an unnecessary delay appearing on comparing the date of his despatch from the thana with that of his arrival at the sudder station, is to report the circumstance to the magistrate. Reg. XX. 1817, sect. 7, cl. 3.

which is to be
presented to the
nazir, who is to
report any delay;

2102. On the departure of the burkundaz from the sudder station, he is again to proceed to the foudaree nazir, who is to note in the fifth column the date and time of his departure; and on his arrival at the thana station, the certificate is to be delivered up to the darogah, mohurir, or jemadar, who, in the event of the burkundaz having loitered on the road, is to report the particulars for the orders of the magistrate. Reg. XX. 1817, sect. 7, cl. 4.

and so, on his
departure from the
sudder station.

2103. Police officers bringing in witnesses or defendants should not be allowed to remain in attendance at the cutcherry, while the examinations of such persons are being taken; as it interferes with their proper duties; and as their object is frequently to see that the witnesses and others adhere to the story, which they have been previously compelled or instructed to state at the thana. C. O. Sup. Pol. *L. P.* No. 10 of 1846.

Police officers
bringing in defen-
dants and witnesses
are not to be al-
lowed to remain in
attendance at the
cutcherry.

OF CHOKEEDARS.

In cities,

2104. The provisions of this Act shall have effect in the cities and stations in which

the Act is to apply.

XXII. 1816 has heretofore been in force, and in every other city, station, town, suburb, and bazar in the presidency of Fort William in Bengal to which the local government at any time may extend the same by notification in the official gazette. Provided always, that this Act shall not be extended to any city, town, suburb, or bazar, unless there be therein (or in some other city, town, suburb, or bazar with which the same may be united as hereinafter provided) a police station under an officer of a grade not below that of jemadar; nor to any agricultural village. Act XX. 1856, sect. 2.

Unions may be formed.

2105. The government may, by notification to be published in the official gazette, unite, for the purposes of this Act, any city, town, suburb, station, or bazar, or any part or parts of a city, town, suburb, station, or bazar, with any other city, town, suburb, station, or bazar, or part or parts of a city, town, suburb, station, or bazar; and in such case all the provisions of this Act applicable to a city, town, suburb, station, or bazar shall apply to such union. Act XX. 1856, sect. 3.

Government may define limits of cities, towns, &c.

2106. For the purposes of this Act the local government may define and declare the limits of any city, town, suburb, station, bazar, or union, and all occupiers of houses within any such city, town, suburb, station, bazar, or union, as aforesaid, or within such limits as shall be so defined as aforesaid, shall be liable to be assessed or rated according to the provisions of this Act for the purpose of maintaining the chokeedars appointed to be maintained in such city, town, station, suburb, bazar, or union. Act XX. 1856, sect. 4.

Houses let to lodgers how to be

2107. If any house be let out in portions to different persons, or be let out to or occupied by lodgers or travellers, the person who shall so let the same, or who shall receive the rents or payments from such persons or lodgers or travellers, shall, for the purposes of this Act, be deemed to be the occupier of such house. Act XX. 1856, sect. 5.

Penalty for removing &c. name of street or number of house.

2108. The magistrate may cause a name to be given to any street and affixed in such place or places as he may think fit, and may also cause a number to be affixed to every house in any street or mohallah for the purpose of identifying such house; and if any person shall wilfully remove, obliterate, or destroy such name or number, he shall be liable, on conviction by a magistrate, to a fine not exceeding twenty rupees. Act XX. 1856, sect. 6.

Magistrate to determine number of chokeedars.

Proviso.

2109. The magistrate shall determine the number of chokeedars to be maintained in any city, town, or other such place as aforesaid; but the number of chokeedars so to be maintained shall not exceed one to every twenty-five houses. Act XX. 1856, sect. 7.

Grades and wages of chokeedars.

2110. The chokeedars appointed under this Act may be different of grades, and the wages to be paid to the several grades shall be determined by the magistrate. Act XX. 1856, sect. 8.

Magistrate to determine the sum to be raised annually.

2111. The magistrate shall determine the total amount required to be raised in any year in any city, town, or other such place as aforesaid, for the purpose of maintaining the chokeedars appointed to be maintained therein, and for the purposes specified in sections 33, 34, 35, and 36, of this Act, together with such sum as the magistrate may consider

necessary to provide against the contingency of losses from defaulters in the current year, and the amount of losses, if any, actually sustained from defaulters in the preceding year. Act XX. 1856, sect. 9.

2112. The tax to be levied in any city, town, or other place as aforesaid, for the purposes of this Act, may be either an assessment according to the circumstances and the property to be protected of the persons liable to the same, or a rate on houses and grounds according to the annual value thereof. The local government, on the report of the magistrate and commissioner of circuit, shall determine in each case whether the tax to be levied shall be such assessment or such rate. Act XX. 1856, sect. 10.

Nature of the tax to be levied.

2113. If the tax be an assessment according to the circumstances and the property to be protected of the persons liable to the same, the aggregate sum to be raised by such tax shall not exceed the average rate of two annas per mensem for each house, and the amount assessed in respect to any one house shall not be more than the pay of a chokeedar of the lowest grade. If the tax be a rate on houses and grounds, it shall not exceed five per centum of the annual value thereof. Act XX. 1856, sect. 11.

Limitation of tax.

2114. For the purpose of making a rate under this Act, the annual value of the houses and grounds liable to the rate shall be computed and ascertained upon an estimate of the gross annual rent at which the same might reasonably be expected to let from year to year. Grounds used for purposes of trade shall be liable to the rate, but grounds used for the purpose of cultivation or for depasturing cattle shall not be liable. Act XX. 1856, sect. 12.

Rate how to be ascertained.

2115. The magistrate may, at his discretion, exempt from the assessment or rate, or may relieve from the payment of his assessment or rate, any occupier who may be unable from poverty to pay the same. Act XX. 1856, sect. 13.

Magistrate may exempt occupiers unable to pay the assessment or rate.

2116. For the purposes hereinafter mentioned the magistrate shall constitute and appoint a panchayat for each such city, town, or other place as aforesaid; or, when he may see fit to divide any such city, town, or place into convenient divisions, for each division thereof; and shall issue a sunnud of appointment, specifying the names, residence, business, or other description of the persons appointed and the period for which the appointment is made. Every panchayat shall consist of three or five respectable persons residing or carrying on business in or near to any such city, town, or other place, or in or near to any such division thereof. Provided that, instead of any one such person, the magistrate may appoint any person whom he may think fit to be a member of the panchayat, notwithstanding such person may not reside or carry on business in or near to such city, town, or other place, or in or near to any such division thereof. Act XX. 1856, sect. 14.

Constitution of panchayats.

Magistrate may appoint person not residing in the place to be a member of panchayat.

2117. The panchayat so appointed, or the majority of them, shall, once in every year, if required so to do by the magistrate, prepare and make in accordance with the rules laid down in the requisition, an assessment or rate upon the several persons liable to be assessed or rated in respect of their occupation of property within the district (whether city, town, or other place as aforesaid, or any division thereof) for which the panchayat shall be appointed, and shall enter the same in a list which shall specify the names of the several occu-

Duties of panchayat.

Form of magis-
trate's requisition.

piers of property within the district liable to be assessed or rated under the provisions of this Act, the trade, business, or other description of such occupier, the property occupied, and the amount payable monthly by such occupier. If the tax be a rate on the annual value of the property occupied, such annual value and the total amount of the annual rate shall also be specified. The requisition of the magistrate to the panchayat to make out such list shall be in the form marked A(a) or B(b) as the case may be, set forth in the appendix to this Act annexed or to the like effect. Act XX. 1856, sect. 15.

(a)

APPENDIX A.

To [*Here insert the names, places of abode, business, or other description of the panchayat.*]

I do hereby require you, the panchayat appointed under Act XX. of 1856, with all reasonable expedition, not exceeding (*Here insert a period to be fixed by the magistrate*) from the date hereof, to make out and forward to me, the under-signed magistrate of the zillah of , a fair and equitable assessment upon the several occupiers of houses, shops, and buildings, in the (*Here describe the city, town, place, or division,*) for the purpose of raising the sum of rupees required for the maintenance of chokeedars for the year commencing on , and other expenses authorized by Act XX. of 1856. You shall regulate and determine the amount of assessment to be levied from every such occupier according to the circumstances and the property to be protected of each person. But the amount assessed in respect of any one house shall not exceed rupees (*Here insert the pay of a chokeedar of the lowest grade*) and the aggregate amount assessed shall not exceed the average rate of 2 annas per mensem for each house, shop, or building in the district.

If the occupier of any house in the said district shall be unable, on the ground of poverty, to pay the assessment to which he is liable under this Act, you shall exempt him from the same ; but the property occupied, together with the name and description of such occupier, shall be specified in the list, together with the ground of exemption.

If any house be let out in portions to different persons, or be let out to or occupied by lodgers or travellers, the person who shall so let the same, or who shall receive the rents or payments from such persons or lodgers, or travellers, shall be deemed the occupier of such house, and shall be assessed accordingly.

The assessment which you are hereby required to make shall specify the name of every occupier of property liable to be assessed, the name, trade, or business, or other description of the person assessed, the annual assessment, and the quota payable monthly ; and may be in the following form, or to the like effect :—

Property occu- pied.	Name of occupier.	Profession or business or other description.	Amount of monthly payment.
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APPENDIX B.

To [*Here insert the names, places of abode, business, or other description of the panchayat.*]

I do hereby require you, the panchayat appointed under Act XX of 1856, with all reasonable expedition, not exceeding (*Here insert a period to be fixed by the magistrate*) from the date hereof, to make out and forward to me, the undersigned magistrate of the zillah of , a fair and equal rate upon the several occupiers of houses, shops, and buildings, and of grounds occupied for the purpose of trade or business, in the (*Here describe the city, town, place or division,*) for the purpose of raising the sum of Rs. required for the maintenance of chokeedars for the year commencing on , and other expenses authorized by Act XX of 1856. You shall regulate and determine the amount of the rate to be levied from every such occupier according to the annual value of the property occupied.

2118. The panchayat shall, if required by the magistrate so to do, instead of making a new assessment or rate, revise and amend the assessment or rate then in force. Act XX. 1856, sect. 16. Panchayat may revise existing assessment or rate.

2119. When an assessment or rate shall have been made or revised, as the case may be, the panchayat shall forward to the magistrate the list containing the same; and the magistrate shall revise, and, if necessary, amend and settle it. Act XX. 1856, sect. 17. Magistrate may amend and settle assessment or rate as revised by the panchayat.

2120. When the assessment or rate shall have been settled, the magistrate shall sign the list, and shall cause one copy thereof, together with a notification prepared according to the form marked C(a) in the appendix to this Act, or to the like effect, and written in the lan- Assessment or rate to be published.

The rent at which any such property may reasonably be expected to let for one year shall be deemed the annual value of such property. The rate shall be an equal per-centage, not exceeding 5 per cent, of such annual value.

Any person occupying ground for the purpose of trade is to be rated in respect thereof; but a person occupying ground for the purpose of cultivation or for depasturing cattle, is not to be rated in respect thereof.

If the occupier of any house or ground, in the said district, shall be unable, on the ground of poverty, to pay the rate to which he is liable under this Act, you shall exempt him from the same; but the property occupied, together with the name and description of such occupier, shall be specified in the list, together with the ground of exemption.

If any house be let out in portions to different persons, or be let out to or occupied by lodgers or travellers, the person who shall so let the same, or who shall receive the rents or payments from such persons or lodgers, or travellers, shall be deemed the occupier of such house, and shall be rated accordingly.

The rate which you are hereby required to make shall specify the name of every occupier of property liable to be rated, the name, and the trade, or business, or other description of the person rated, the annual rateable value of the property, the annual rate, and the quota payable monthly; and may be in the following form or to the like effect :—

Property occupied.	Name of occupier.	Profession or business or other description.	Annual value of property.	Annual rate.	Amount of monthly payment.
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(a)

APPENDIX C.

An assessment (or rate, as the case may be) made for (Here describe the city, town, village, or other place or division for which the rate is made) upon the several occupiers of houses and other property in the said district, pursuant to Act XX. of 1856, for the purpose of maintaining chokeedars for such district.

Property occupied.	Names of occupiers.	Profession or business.	Amount of monthly (or quarterly) assessment (or rate).
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Whereas the above assessment (or rate, as the case may be,) has been duly made pursuant to Act XX of 1856 and has been revised and settled by me, the undersigned magistrate of _____, the several persons whose names are included in the

guage of the province in which the city, town, or place is situate, to be stuck up in some conspicuous place in the district for which the assessment or rate has been made; and another copy, together with a like notification, at the nearest police thana; and shall also cause a third copy to be deposited in his own office. Act XX. 1856, sect. 18.

Assessment or rate to stand good for one year.

Change of occupation before a new assessment or rate.

Revised assessment or rate to be deemed a new one. Proviso.

Appeal from assessment or rate.

Limitation of appeal.

Commissioner of circuit may direct revision of assessment or rate.

2121. Unless revised or corrected as hereinafter provided, every assessment or rate under this Act shall stand good for one whole year, and until a new one is made; and in case the occupier of any property included in any assessment or rate shall be changed before a new one is made, the new occupier shall be liable in respect of such property for any portion of the assessment or rate which shall have become payable during his occupation instead of the former occupier thereof; and, after notification to such person, the magistrate may cause his name to be substituted in the said list for the name of the former occupier. Every assessment or rate which shall be revised according to the provisions of section 16 shall be deemed a new assessment or rate. Provided always, that, if no new assessment or rate is made within the first three months of any year, the list of the previous year shall be re-published according to the provisions of section 18, and shall thereupon be deemed to be the assessment or rate for the current year, and shall be open to appeal under the next succeeding section. Act XX. 1856, sect. 19.

2122. Any person assessed or rated, who shall be dissatisfied with his assessment or rate, or who shall dispute his occupation of any property or his liability to be assessed or rated, may appeal on unstamped paper to the magistrate; and the magistrate, after making such inquiries as he deems necessary, by examination of the appellant on oath or solemn affirmation, or otherwise, may confirm the assessment or rate or amend the same. In case the magistrate confirm the assessment or rate, he may award costs against the appellant. The decision of the magistrate in such cases shall be final, and no objection shall be taken to any assessment or rate, nor shall the liability of any person to be assessed or rated be questioned, in any other manner or by any other court. Provided that no appeal shall be received after the expiration of one month from the time of the notification of the assessment or rate prescribed by section 18, or of the notification of the substitution of the name of an occupier under section 19, unless the magistrate, upon reasonable cause shown, shall extend the time for receiving such appeal. Act XX. 1856, sect. 20.

2123. The commissioner of circuit, with the consent of the local government, may, at any time, direct the magistrate to revise the assessment or rate of any city, town, or other place as aforesaid, specifying the reasons which, in his opinion, render such revision necessary;

said assessment (or rate) are hereby required to pay the monthly (or quarterly) contributions set opposite to their names with regularity to the tax-darogah or other person appointed by the magistrate to receive the same, the first payment on the 10th day of the month next succeeding the date of this notification, and every subsequent payment on or before the 10th day of each succeeding month (if the tax is to be collected quarterly, the months in which the payment is to be made must be specified); or in default thereof, any arrear that may be due will be realized by distraint and sale of the personal effects of the defaulter, or of any goods and chattels which may be found on the premises in respect of which such defaulter is assessed (or rated) and such other proceedings adopted for the recovery of the same as are allowed by law.

Dated this day of

Magistrate of

and the magistrate shall, according to such direction, revise and, if necessary, amend the same. Act XX. 1856, sect. 21.

2124. The magistrate may require the panchayat to revise the assessment or rate at any period during the year; but on every such occasion he shall address a written order to the panchayat, specifying the reasons which render such revision necessary, and requiring an amended return within a stated period. Act XX. 1856, sect. 22.

direct revision at any time of the year, for reasons to be stated.

2125. Whenever any assessment or rate is revised during the year, as provided in the two last preceding sections, a revised list, together with a notification as prescribed in section 18 shall be prepared and published in the manner therein directed. And all objections to such revised assessment or rate shall be made and dealt with in the manner prescribed in section 20. Act XX. 1856, sect. 23.

Publication of assessment or rate as revised under the two last sections.

2126. If any person appointed a member of a panchayat refuse to undertake the office, or omit to perform the duties thereof, and do not, within fifteen days from the date of his appointment, show satisfactory grounds for his refusal or omission, or provide such a substitute as the magistrate approves, the magistrate may fine such person in a sum not exceeding fifty rupees. Act XX. 1856, sect. 24.

Penalty for refusal to serve on panchayat.

2127. If the persons appointed a panchayat, or a majority of them, refuse, or omit, for a period of fifteen days after the receipt of an order from the magistrate, to perform the duties required of them, the magistrate may himself make or revise the assessment or rate, and may enforce the same as if it had been made or revised in the first instance by the panchayat. Provided that the functions of the panchayat shall not thereby absolutely cease and determine, but may be resumed at any time, only not so as to invalidate any act done by the magistrate under this section. Act XX. 1856, sect. 25.

If panchayat refuse or omit to act, magistrate may assume their functions.

Proviso.

2128. No person shall be bound to act on a panchayat unless he shall reside or carry on business within the limits of the district for which the panchayat is to be appointed. Act XX. 1856, sect. 26.

Residents only bound to act on a panchayat.

2129. Every panchayat shall be appointed for the period of one year, and no person shall be compelled to serve on a panchayat for more than one year at a time, or within less than three years after the expiry of previous service; but nothing in this section shall prevent any person from being appointed to serve on a panchayat at any time whatsoever with his own consent. Act XX. 1856, sect. 27.

Duration of panchayat and limitation of service thereon.

2130. If a majority of the persons assessed or rated in any district, for which a panchayat shall be appointed, not being in arrear, make application in writing to the magistrate for the removal of any member of the panchayat appointed for such district, the magistrate, if he think it expedient, may remove such member from the panchayat. Act XX. 1856, sect. 28.

Member of panchayat removable only on application of rate-payers.

2131. If any vacancy shall occur among the members of a panchayat, or if any member appointed shall refuse or decline or be unable to act, the magistrate may nominate and appoint another person to supply the vacancy or to act in the stead of such member, subject to the rules already laid down as to the original appointment of members; but such appointment may be made by a written communication to the person appointed, and it shall

Vacancies in panchayat how to be supplied

not be necessary to issue a new sunnud under section 14 of this Act. Act XX. 1856, sect. 29.

2132. The panchayat shall give notice to the magistrate of any neglect or misconduct on the part of any chokeedar within the district for which they are appointed which shall come to their knowledge ; and shall also give notice of any vacancy which shall occur in consequence of the death or absence of any chokeedar or from any other cause. Act XX. 1856, sect. 30.

2133. In cities and large towns containing three or more divisions or districts, the magistrate may appoint a sudder panchayat consisting of not less than five members, who may be selected either from the members of the local panchayats or from any other residents of the city or town. It shall be the duty of the sudder panchayat to assist the magistrate, when required so to do, in carrying out generally the objects of this Act, and particularly in revising the assessment or rate made by the district panchayats, and enquiring into and reporting on appeals preferred against the same. Act XX. 1856, sect. 31.

Appointment and
registry of chokee-

2134. The chokeedars to be employed under this Act shall be appointed by the magistrate, and the magistrate shall cause to be kept a register in which shall be entered the name, age, place of residence, and previous occupation of every person so appointed, with the date of his appointment. Act XX. 1856, sect. 32.

Appointment of
jemadars and in-
spectors.

2135. Subject to the approval of the commissioner of circuit, the magistrate may appoint such number of jemadars and inspectors as may be necessary for the supervision and control of the chokeedars. Provided that the number of these officers shall not be greater than one jemadar to fifteen chokeedars, and one inspector to sixty chokeedars. Act XX. 1856, sect. 33.

other establish-
ment.

2136. Subject to the approval of the commissioner of circuit, the magistrate may appoint one or more tax-collectors or darogahs and such other servants as may be necessary for preparing, or assisting the panchayat in preparing, the assessment or rate, for copying the same, for collecting the tax, keeping the accounts and records, and otherwise carrying out the purposes of this Act. The magistrate shall take from every tax-collector or darogah such security for the due disposal of the sums collected by him as may be thought necessary. Act XX. 1856, sect. 34.

Contingent ex-
penses.

2137. The magistrate may further incur any reasonable expense in the purchase of stationery, in providing badges, dresses, and weapons for the chokeedars, and for any other contingencies that may seem to him necessary. Act XX. 1856, sect. 35.

Surplus funds
poses.

2138. After paying the wages of the chokeedars, and defraying the charges specified in the three last preceding sections of this Act, the magistrate may, with the sanction of the commissioner of circuit, appropriate any sum which may be available, to the purpose of cleansing the city, town, or place, or of lighting or otherwise improving the same. Act XX. 1856, sect. 36.

as.

2139. The tax-darogahs shall prepare, from the lists hereinbefore mentioned, a register, which shall be attested by the magistrate or his deputy or assistant, and shall contain the

names of all persons assessed or rated so far as they can be ascertained, the property in respect of which the assessment or rate in each case is imposed, and the amount payable monthly by each person. Act XX. 1856, sect. 37.

2140. On the tenth of each calendar month, or so soon after as possible, the tax-darogah shall proceed in person or through some one of his office establishment, to collect the amount due for the current month from each person subject to the tax; and for all sums so collected the darogah shall grant a receipt. Provided that, with the sanction of the commissioner of circuit previously obtained, the collection may be made quarterly instead of monthly; and in such case, the amount due for each quarter shall be collected in the last month of that quarter. Act XX. 1856, sect. 38.

To collect
assessment.

2141. The tax-darogah shall remit to the magistrate, in such manner as the magistrate shall direct, all sums of money collected either by himself or by any one of his establishment; and the magistrate, or some officer of his establishment authorized on that behalf, shall give the darogah a receipt for every sum of money so remitted. The magistrate shall also cause all such sums of money to be credited to a separate fund to be called the chokeedaree fund of the city, town, or place, in or on account of which they are collected. Act XX. 1856, sect. 39.

To
tions to the magis-
trate.

2142. The tax-darogah shall prepare all summonses and processes to be issued against defaulters, and shall make the usual returns thereto, and shall keep a regular account of all distresses levied and sales made by him for the realization of arrears. Act XX. 1856, sect. 40.

To prepare sum-
mons, &c.

2143. On the 20th of each calendar month, or as soon after as possible, the tax-darogah shall deliver or transmit to the magistrate, in one list, a statement of all defaulters, the property in respect to which they are assessed or rated, the amount of the monthly assessment or rate, and the amount due from each. Act XX. 1856, sect. 41.

To report default-
ers to magistrate.

2144. On receipt of the aforesaid list, the magistrate shall issue a summons against each of the defaulters therein mentioned, requiring him either to pay the demand or to attend at the cutcherry of the magistrate within a reasonable time, to be specified in the summons, to show cause for his refusal. Act XX. 1856, sect. 42.

Summons of de-
faulters.

2145. If any defaulter fail to appear in answer to the summons, or having appeared fail to satisfy the magistrate that no arrear is due from him, the magistrate may issue a warrant to the tax-darogah, authorizing him to levy the whole or any part of the demand by distress and sale of any goods and chattels belonging to the defaulter, or being at any time upon the premises in respect of which the arrear is due; and the magistrate's order as contained in the warrant shall be final. Act XX. 1856, sect. 43.

Assessment to be
levied from default-
ers by distress and
sale.

2146. The tax-darogah shall make an inventory of all goods and chattels seized under the magistrate's warrant, and shall give previous notice of the sale, and the time and place thereof, by the beat of drum in the district in which the property is situated. If the arrear be not paid with costs, or the warrant be not in the meantime discharged or suspended by the

Sale how to be
conducted.

2147. Any tax-darogah or other servant appointed under this Act, and any chokeedar or officer of police, who shall purchase any property at any such sale as aforesaid, shall be liable, upon conviction before a magistrate, to a penalty not exceeding fifty rupees; and the property shall be confiscated. Act XX. 1856, sect. 45.

Penalty for

2148. If no sufficient goods or chattels belonging to a defaulter, or being upon the premises in respect of which he is assessed or rated, can be found within the district in which the premises are situate, the magistrate may issue his warrant to the nazir of his court for the distress and sale of any personal property or effects belonging to the defaulter within any other part of the jurisdiction of the magistrate, or for the distress and sale of any personal property belonging to the defaulter within the jurisdiction of any other magistrate whatsoever; and such other magistrate shall back the warrant so issued, and cause it to be executed, and the amount, if levied, to be remitted to the magistrate issuing the warrant. Act XX. 1856, sect. 46.

Sale of property beyond limits of town, &c.

2149. All goods and chattels, except tools or implements of trade, which may be found upon any premises in respect of which an arrear is due, shall be liable to be distrained for the recovery of such arrear. If the goods and chattels belong to any person other than the defaulter, the defaulter shall indemnify the owner of such goods and chattels from any damage he may sustain by reason of such distress or by reason of any payment he may make to avoid such distress or any sale under the same. Provided that no distress shall be made for any arrears due under this Act after the expiration of six calendar months from the time when such arrears became due. Act XX. 1856, sect. 47.

All goods found on premises liable to sale.

But owner of goods to be indemnified by the defaulter.

2150. Every person who shall wilfully obstruct or molest any tax-darogah or any of his establishment, in the performance of their duties under this Act, or shall fraudulently conceal, remove, or dispose of any of his property for the purpose of avoiding a distress under the provisions of this Act, or shall knowingly assist any other person in so doing, shall be liable, on conviction before a magistrate, to a penalty not exceeding fifty rupees. Act XX. 1856, sect. 48.

Penalty for obstructing tax-darogah in the execution of duty.

2151. The magistrates shall receive and try all complaints preferred on oath or solemn affirmation against any tax-darogah or other person appointed under this Act for extortion, malversation, or other misconduct in the discharge of his duty. On proof of any such offence, the tax-darogah or other person as aforesaid shall be liable to dismissal from office, and to imprisonment, with or without labor, for a period not exceeding six months; and may also be compelled to refund any money corruptly or unduly exacted or received, and to deliver up any effects which may have been illegally distrained or sold, or the value thereof, or in default and until such delivery or refund be made, shall be liable to further imprisonment, with hard labor, for not more than six months. But nothing in this section shall be taken to prevent the magistrate from committing any tax-darogah or other person as aforesaid for trial before the sessions court, or to limit the power of the sessions court in regard to the punishment of such offences under the general law. Act XX. 1856, sect. 49.

Magistrates to try complaints against tax darogah of extortion, &c.

Penalty for extortion, &c.

Proviso.

2152. The chokeedars, and the jemadars and inspectors appointed under this Act shall exercise all the powers, and perform all the duties, and be subject to all the liabilities

Powers, duties, and liabilities of

dars, and inspectors.

of police officers as prescribed in the general regulations of the Bengal code or Acts of the government of India for the time being in force, so far as such powers, duties, and liabilities are not inconsistent with, or otherwise expressly provided for by this Act. The chokeedars, and the jemadars, and inspectors, are in all respects subordinate to the police darogah of the thana, within the limits of which they may be employed. Act XX. 1856, sect. 50.

Chokeedars to wear badges.

2153. Every chokeedar appointed under this Act shall wear a badge with a number, and the name of the city, town, place, or division for which he is appointed, engraved thereon. Act XX. 1856, sect. 51.

Duties of chokeedars :—

to apprehend offenders ;

to prevent nuisances ;

to give intelligence of resort of thieves, &c ;

to examine and detain suspected persons.

2154. *First.*—Every chokeedar and every jemadar and inspector appointed under this Act shall have power, without warrant, to apprehend and convey immediately to the nearest police station any person or persons taken in the act of committing any heinous offence, or whom he shall have just cause to suspect to be about to commit or to have committed a heinous offence, or against whom a hue and cry shall be raised. *Second.*—He shall have power to prevent obstructions and nuisances on the roads and streets. *Third.*—He shall give immediate intelligence to the police darogah of the resort to his division of any receivers of stolen goods, or of any robbers or other persons of notorious or suspected character, or of any circumstances likely to occasion a breach of the peace. *Fourth.*—He may stop, examine, and, if necessary, detain, any person who shall be reasonably suspected at any time of having or conveying any thing stolen, or who shall be found between sunset and sunrise lying or loitering in any highway, yard, or other place, and unable to give a satisfactory account of himself, and may convey such person to the nearest police station. Act XX. 1856, sect. 52.

All persons required to assist chokeedars in making arrests.

2155. If a chokeedar or other police officer be unable to effect an arrest, he may require all persons present to assist him ; and any person who refuses or neglects to comply with such requisition, shall be liable, on conviction by a magistrate, to a fine not exceeding fifty rupees, or to imprisonment not exceeding two months. Act XX. 1856, sect. 53.

Chokeedars, &c., how to be paid.

2156. On the fifteenth day of each month, or on such other day not later than the fifteenth day of the month as the magistrate may appoint, the chokeedars and the jemadars and inspectors (if any) shall be mustered at the thana to which they are attached, and the police darogah or the mohurir of the thana shall there pay them the wages due to them up to the close of the preceding month, and shall at the same time take the receipt of each chokeedar in an official register of receipts prepared for the purpose ; and the darogah, after signing the register in attestation of its correctness, shall transmit the same to the magistrate. Act XX. 1856, sect. 54.

Punishment of chokeedars for neglect of duty, &c.

2157. Any chokeedar and any jemadar or inspector appointed under this Act, who is convicted of neglect of duty or misconduct, shall be liable to fine to an extent not exceeding half a month's wages, or to imprisonment for any period not exceeding six months. Act XX. 1856, sect. 55.

Suspension or dismissal of police officers.

2158. The magistrate may suspend or dismiss any officer appointed under this Act whom he shall think remiss or negligent in the discharge of his duty, or otherwise unfit for the same. Act XX. 1856, sect. 56.

2159. All fines levied under this Act shall be credited to the chokeedaree fund, and held available for the purposes of this Act. Act XX. 1856, sect. 57.

Fines how to be disposed of.

2160. Assistants to magistrates vested with special powers, and deputy magistrates vested with special powers, when posted at stations other than the sudder station of the magistrate, and empowered, under Act X. 1854, to try cases without reference from the magistrate, may exercise all the powers hereby vested in a magistrate; and any assistant or deputy magistrate vested with special powers may perform any of the duties hereby assigned to a magistrate when referred to him by the magistrate to whom he is subordinate. Act XX. 1856, sect. 58.

Jurisdiction.

2161. All the proceedings of a magistrate under this Act, except as otherwise specially provided, shall be subject to the control of the commissioner of circuit; and all the proceedings of the commissioners of circuit shall be subject to the control of the local govern-

Proceedings of magistrate and commissioner of circuit respectively subject to control of local government

2162. Nothing contained in this Act shall extend to the town of Calcutta. Act XX. 1856, sect. 60.

Act not to apply to town of Calcutta.

2163. Wherever in this Act or in any appendix thereto, there is nothing in the context requiring a different interpretation—the word “magistrate” shall include a joint magistrate, and any person lawfully exercising the powers of a magistrate: the word “house” shall include any shop or warehouse: the word “bazar” shall mean any place of trade where there is a collection of shops or warehouses: the word “district” shall mean a city, town, bazar, or union, or any division thereof: the expression “police darogah” shall include any tuhseeldar or naib tuhseeldar entrusted with police jurisdiction. Act XX. 1856, sect. 61.

Interpretation of Act.

2164. It is the duty of the darogahs, under the guidance and instruction of the magistrate, to keep up at their thanas a complete register of the village watchmen, employed within their respective limits, drawn out according to the form No. 6 (No. 19 of appendix B); and upon the death or removal of any of the watchmen, the landholders and other persons, to whom the right of nomination to such vacancies belongs, are to send the names of the persons, whom they appoint, to the darogah of the jurisdiction, that they may be registered by him as above directed.(a) Reg. XX. 1817, sect. 21, cl. 1.

Villag

Darogahs to keep up register of chokeedars.
Landholders, &c.

2165. For the more complete formation of the above register, and to enable the magistrates at all times to ascertain what number and descriptions of watchmen and guards are maintained in aid of the police throughout their respective jurisdictions,—every landholder, farmer, merchant, or other person, employing paiks, chokeedars, pasbans, nigabans, burkundazes, or any other description of watchmen or guards, is to transmit, in the first

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(a) Under this rule the Calcutta Court held that there is a legal obligation on zumeendars, or other persons to whom the right of nomination belongs, to nominate chokeedars. But as the right of nominating chokeedars is not vested by law in any particular party, that question must be decided by local custom. It was also held that there is no penalty prescribed in the law by which a magistrate can punish any person for not appointing a chokeedar; and that therefore he cannot award any punishment under his general powers. Reports L. P. 1854, part 2, page 175. It would seem, however, from the recorded opinions of the judges that the majority did not in fact hold that a magistrate could not under his general powers punish for an offence for which the law has specified no penalty.

Penalty in cases of neglect or wilful omission.

month of each succeeding Bengal, Fussily, or Willaity year (according to the era current in the district) made up to the last day of the preceding year, a list thereof, specifying the names, occupations, places of residence, and allowances in land or money, of the several persons entertained by them, to the magistrate of the zillah or city in which they are employed. Any neglect to furnish such lists (especially after being called upon by the magistrate), as well as any wilful omission to include in them persons actually employed as guards or watchmen, of any denomination, is liable to a fine to government not exceeding 200 rupees, to be determined by the magistrate according to the situation of the party and circumstances of the case. Reg. XII. 1807, sect. 21.

Lists to be furnished of all private servants employed as guards, &c.

2166. All private servants employed as guards, watchmen, &c. come within the rules of sect. 21, Reg. XII. 1807. The magistrates are carefully to enforce the provisions of that law, taking care that the lists required are regularly given in to themselves, as well as to the assistants or deputy magistrates in charge of sub-divisions. C. O. Sup. Pol. *L. P.* No. 3 of 1847.

Fine how to be levied; and from whom.

* *v. para.* 1847.

2167. Any fine imposed in conformity to the above provision should be commuted, if not paid within a given time, to imprisonment for a limited term.*—In the absence of the zumeendar, the actual manager of the estate is the responsible person, and should be proceeded against in default of compliance with the above requisition. Const. No. 1150.

Chokeedars are subject to daro-

2168. The village watchmen are subject to the orders of the darogahs. Reg. XX.

and are not zumeendar's ser-

2169. Under the above provision, chokeedars cannot be considered in the light of zumeendar's servants. Const. No. 1281.

Chokeedars when and how to make at the

2170. Village watchmen who reside within one coss of the thana to which they are subject, are to report daily to the thana all occurrences connected with the police, which have happened in their respective villages during the preceding twenty-four hours;—village watchmen, residing from one to three coss distant from the thana, are to furnish similar reports twice every week;—and all other watchmen, whose residence is situated at a greater distance, are to report once in every week, or fortnight, as they are specially instructed by the darogah so to do. Reg. XX. 1817, sect. 21, cl. 3.

Reports of chokeedars to be entered in thana diaries.

2171. All occurrences reported by the village watchmen are to be recorded by the mohurirs in the thana diaries; but it is not to be considered necessary to enter in such diaries the reports of watchmen, who have no communications to make further than that the peace of their divisions has been undisturbed since their last report. Reg. XX. 1817, sect. 21, cl. 4.

Duties of chokeedars to the

2172. The village watchmen are to apprehend and send to the darogah, or other police officer presiding at a thana, any person who is taken in the act of committing murder, robbery, housebreaking, or theft; also proclaimed offenders, and persons against whom a hue and cry has been raised of their having been concerned in a recent criminal offence. It is further the special duty of the village watchmen to convey to the thana immediate intelligence of any robbers, who have concealed themselves in their respective villages or in the adjacent country; and also of any vagrants, or other persons who are lurking about

the country without any ostensible means of subsistence, and who cannot give a satisfactory account of themselves. It is likewise the business of the village watchmen to convey early intimation to the thana of all murders, robberies, burglaries, thefts, violent affrays, and other heinous offences, perpetrated in the villages or places in which they are stationed. Reg. XX. 1817, sect. 21, cl. 5.

2173. The report of the village watchmen to the police officers of the regular establishments is to be made verbally; and they are not, unless they appear as prosecutors, to be sworn to their depositions at the thana, or to be detained at the thana, or sent into the magistrate's court, unless on account of misconduct, or under the special orders of the magistrate. Reg. XX. 1817, sect. 21, cl. 6.

Reports to be received verbally; and chokeedars not to be detained or sent to the magistrate.

2174. The darogahs are invariably to ascertain and report, when making enquiries on the occasion of any robbery, burglary, or theft, the conduct of the village watchmen; and whether they were present at their posts when the offence was perpetrated; if not, the cause of their absence, and whether there is reason to believe that they were themselves concerned in, or connived at, the commission of the crime. In the event of any neglect or suspicion of criminality attaching to a village watchman, the darogah is either to send the individual to the magistrate with a separate report of the grounds of the charge exhibited against him and evidence to establish the same, or is to forward a report in the first instance and wait the instructions of the magistrate, as the nature of the alleged offence dictates. In the event of any gross neglect or misconduct in the discharge of his duty, as a police officer, being established against a village watchman, he is liable to dismissal from his station by order of the magistrate, independently of any punishment to which he is subject for specific acts of criminality under the laws and regulations in force. Reg. XX. 1817, sect. 21, cl. 7.

Darogahs are to

and how to proceed in cases of neglect or suspicion of criminality.

Punishment.

2175. Chokeedars cannot be fined for neglect of duty without a judicial enquiry. Conviction and punishment can only follow proof of the offence; and therefore the neglect charged must be established by evidence. Appeals in such cases lie to the session judge and not to the superintendent of police. Reports *L. P.* 1855, part 2, page 192; and 1856, part 1, page 907.

Not to be punished without judicial enquiry.

2176. The provisions of Reg. II. 1832, do not exempt the chokeedars from the duty of reporting the commission of such offences to the police, who are still bound to report to the magistrate all cases that come to their knowledge. C. O. No. 130 of vol. 2.

Chokeedars are to report all thefts and burglaries whether prosecuted or not.

2177. As chokeedars found guilty of neglect of duty were not formerly liable to stripes in addition to imprisonment, the provisions of Reg. II. 1834, in prohibiting the infliction of stripes, do not authorize an addition to the period of imprisonment to which they were liable previous to the issue of that enactment.(a) Const. No. 923. C. O. No. 238 of vol. 2.

They are not liable to imprisonment in stripes.

(a) It would seem that the punishment of chokeedars, especially those who are paid by land, and of other inferior police officers, for minor cases of neglect or misconduct, falls under the general powers of a magistrate. But it is declared in Const. No. 244 that, as a specific provision is made in cl. 5, sect. 5, Reg. VIII. 1809 (*v. para.* 2063) for the punishment of officers of police for neglect of duty, the magistrate is restricted in such cases to the limitation of punishment therein

Chokeedars are not to be employed privately by police officers.

Duties of patrolling in places, where regular police establishments are stationed.

Chokeedars are to resist offenders to the utmost of their ability, and to require the headmen of the villages to assist them.

fusal.

* v. para. 705.

Police not to interfere to procure the payment of chokeedars' wages.
L. P.

2178. The darogahs or their police officers are prohibited, under penalty of dismissal from office, from employing the village watchmen on their private concerns, or on any duties unconnected with the police. Reg. XX. 1817, sect. 21, cl. 8.

2179. In those towns and villages, where the darogahs of the mofussil police jurisdictions, or the officers of outposts, are stationed, the duties of watching and patrolling are to be performed conjointly by the regular police officers and the village watchmen; and private watchmen entertained by individuals for guarding their habitations, shops, or warehouses, are also to afford their assistance, and are to be considered subject, in the performance of this duty, to the orders of the police darogah of the station. Reg. XX. 1817, sect. 21, cl. 9.

2180. On the occurrence of a gang or highway robbery, or any robbery by open violence, murder, burglary or theft attended with wounding, or any other heinous offence attended with a violent breach of the peace, the village watchmen are, to the utmost of their ability, to resist and endeavour to apprehend the offenders, and are to require the headmen of the village to collect the inhabitants, and to oppose and seize the criminals, or to pursue them if they have fled; and it is incumbent on the inhabitants of the villages through which or near to which the pursuit lies, to afford, on the requisition of the village watchman or other police officer, every practicable assistance towards the apprehension of the robbers or other offenders, and the recovery of any property stolen or plundered by them, continuing the pursuit from village to village. Any headman or watchman of a village, who is convicted before the magistrate of wilful inattention to such requisition, is liable to fine and imprisonment not exceeding the limits prescribed by sect. 19, Reg. IX. 1807.* Reg. XX. 1817, sect. 21, cl. 10.

2181. Any interference on the part of the police officers, either with or without the orders of the magistrate, to procure the payment of wages said to be due to the village chokeedars, is illegal. It is also illegal to compel the munduls and ryots to keep watch or

defined; and that, unless some distinct misdemeanor beyond neglect of duty is established, the case does not fall within the magistrate's discretion, under the general powers vested in him by sect. 19, Reg. IX. 1807. The limitation of punishment referred to, however, is a fine of "a sum equal to one month's salary, to be levied by a stoppage of the fixed allowance payable to such officer;" and it follows that this provision has no effect in the case of a chokeedar who receives no fixed salary from government; while it is equally clear that there are many cases of neglect and misconduct, which would not be sufficiently punished by the fine of a month's pay though hardly worthy of dismissal, and many in which no punishment but moderate imprisonment would produce the desired effect. According to the construction above quoted (No. 928) Reg. II. 1854, entirely repeals the following provision of sect. 6, Reg. III. 1812:—"Any paik, chokeedar, pasban, nigaban, or other description of watchman subject to the orders of any cutwal or darogah of police, who may hereafter be proved guilty of any gross neglect or misconduct in the discharge of his duty as a police officer (such neglect or misconduct not being of a nature which may render it proper that he should be committed or held to bail for trial by the court of circuit) shall for such offence be liable to suffer corporal punishment by sentence passed by the magistrate, not exceeding 80 stripes of a ratan, instead of the penalties of fine or imprisonment, provided the offender shall appear a fit object of corporal punishment, and the magistrate shall be of opinion that the infliction thereof will operate as a better example than the penalties of fine or imprisonment." The law therefore stands as it did before the enactment of the latter regulation; and, unless the incidental mention of imprisonment therein, and in Const. No. 928, can be construed to empower the magistrate to award imprisonment, either no punishment can be inflicted except the fine of a month's pay, or such cases must fall within the general powers of a magistrate notwithstanding the principle enunciated in Const. No.

to go the rounds during the night within their respective villages: and police officers are required to refrain from such acts under pain of severe punishment. C. O. Sup. Pol. *L. P.* No. 14 of 1839, and No. 8 of 1841. Govt. order on police report for the first 6 months of 1838, page 230.

Munduls, &c.
are not
pelled
watch.

2182. Reg. VII. 1819 does not apply to chokeedars, and the realization of their wages under that law is illegal. Reports *L. P.* 1854, part 1, page 260.

Wages not to be

2183. Crops grown on lands allotted to village chokeedars for their maintenance cannot be exempted from liability to sale, in satisfaction of decrees issued against their owners. Const. No. 1212.

crops are not ex-
empted from sale
in execution of de-
crees.

2184. In khas mahals under settlement, the magistrate is to arrange with the local settlement officer for the keeping up and payment of a sufficient number of chokeedars; it being the wish of government that the village police of khas mahals, that is, mahals the property of government, should be so manned, paid, and organized as to be a model to all surrounding estates. When the settlement is in progress, the magistrate is to inform the settlement officer whether the police are to be provided for in land or money, and what number of individuals is to be provided for in each village. On receiving the information, the settlement officer is to assign three acres of average good land to each chokeedar, and one acre to each bulahur, if the subsistence is ordered to be given in land; and three rupees a month to each chokeedar, and one rupee a month to each bulahur, if the subsistence is to be given in money. In the former case, the settlement officer is to cause a statement of the numbers assigned to the fields in the field map and khusrah to be furnished to the magistrate. C. O. Sup. Pol. *L. P.* No. 11 of 1841. C. O. S. B. R. *L. P.* No. 44 of 1840, and No. 18 of 1841.

Rules for the es-
tablishment of cho-
keedars in govern-
ment khas mahals.

2185. Appeals from the orders of a magistrate, maintaining village chokeedars in possession of the lands set apart for their subsistence, lie not to the session judge but to the superintendent of police. The same rule is applicable to appeals from orders enforcing payment of their allowances in money or other kinds. C. O. No. 84 of vol. 4, *W. P.*

Appeals regard-
ing chokeedars'
chakeran land and
payment of their
wages lie the
superintendent of
police.

SECTION VII.

RULES FOR THE CONTROL, MANAGEMENT, AND CONDUCT OF THE ROAD POLICE ON THE GRAND TRUNK ROAD.

2186. *Rule 1.* The magistrates, assistants, and deputy magistrates, through whose jurisdictions the grand trunk road passes, have the supervision and control of the road police within the limits of their respective jurisdictions. *Rule 2.* The deputy magistrates and assistants in sub-divisions on the road are required to visit the road police posts at least twice in every month, especially during the period between the 15th of October and the 20th of June. The magistrates of districts, if unable from other business to visit the road, will depute their assistants or other competent officers for that purpose. *Rule 3.* The magistrates, assistants, and deputy magistrates, will take care that their subordinates prevent

**Lower Pro-
vinces.**

Supervision and
control.

Deputies and
assistants to
the police post
twice in every
month

Ob- to
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all obstructions, on the road, by the stopping of carts, trucks, or carriages. At the halting places, and elsewhere, carts and other carriages stopping are to be carefully drawn to one side of the road, and the centre kept sufficiently free to admit of two carriages at least passing abreast. *Rule 4.* Each station jemadar has the immediate charge and control of the sowars, burkundazes, and chokeedars within his beat. *Rule 5.* The burkundaz at each marhala shall require and cause the two chokeedars under him to patrol the road before daybreak East and West, until they meet the chokeedars of the adjacent marhalas, and then return to their post, reporting what they may have seen, or what has occurred. This patrol will be repeated during the day, again in the evening after sunset, and during the night. The magistrates, assistants, and deputy magistrates, will regulate the hours for patrol according to the season of the year. Nothing in this rule, however, shall be considered to diminish the responsibility of the police in respect of any occurrence taking place at any time whatever. *Rule 6.* The sowars will patrol East and West of the station-house to the limits of their jurisdiction. They will see that the burkundazes and chokeedars are at their posts, and have performed, or are performing their patrol; and they will report all circumstances to the jemadar on their return. *Rule 7.* The jemadar himself will frequently visit the different posts under his charge, and he will be held responsible if he fails to ascertain and report any neglect or misconduct on the part of his subordinates. *Rule 8.* In case of the death by sickness or otherwise in any chuttee, or on the road, of any traveller who may have no companions to take charge of his property, the burkundaz of the nearest marhala shall transmit the same at once to the jemadar, who will forward it with a report of the circumstances to his superior. *Rule 9.* In the case of any suspicious death, or of any corpse being found on the road, the body shall be, if possible, sent to the head quarters of the station or sub-division for medical examination. The jemadar is to proceed to the spot and send notice to the jemadars East and West, with a description of the person; and the police shall use every endeavour to ascertain by whom the deceased was last seen, and in what company. *Rule 10.* On the occurrence of any highway-robbery or dacoity on the road, the burkundaz of the marhala shall immediately despatch one chokeedar with intelligence to the nearest police station, and the other to the next marhala, whence the intelligence shall be conveyed from marhala to marhala until it reaches the road jemadar. The latter will proceed to the spot, and endeavour to procure a clue to the offenders; but on the arrival of the thana police, he will make over the inquiry to them, together with whatever information he may have obtained. *Rule 11.* On the occurrence of any crimes on the road, especially when travellers are concerned, the deputy magistrates and assistants will enter upon the case directly, so that the parties may suffer no unnecessary detention. If the case be within their competency, they will decide it at once; and if it be necessary to send the case to a higher tribunal, they will be most careful that only those persons whose evidence is absolutely required are detained from proceeding on their journey. *Rule 12.* The jemadars, burkundazes, and chokeedars, will caution travellers, and others moving by night with merchandize and goods, of the risk which they incur; but they are strictly prohibited from compelling travellers to stop at any particular place, and they will afford protection to such as may stay in their vicinity. *Rule 13.* The

Station jemadar.

Chokeedars to patrol.

Sowars to patrol.

Jemadar to visit posts.

Deaths of travellers.

Suspicious death.

Highway robbery or dacoity.

Adjudication of cases to be speedy.

Parties not to be detained unnecessarily.

by

magistrates, assistants, and deputy magistrates, will warn all the road police to be on the alert regarding the passing of bodies of up-country men along the road, either in numbers or following each other, without much baggage or with only a lotah and clothes; and notice of such is to be forthwith sent to the assistant or deputy magistrate, who will take measures to stop and examine them. Immediately on the occurrence of a dacoity or robbery by a body of up-country men, notice will be sent by dāk to all the magistrates of districts and deputy magistrates on the road to the West of the place where the offence was committed, so that means may be taken by them to watch the bye-roads and the fords on the River Soane leading to Shahabad, and thus the offenders be stopped on their return. (a) *Rule 14.* The magistrates, assistants, and deputy magistrates, will take every opportunity of warning travellers against allowing strangers to attach themselves to their party, and to avoid eating, drinking, or smoking any thing from the hands of persons with whom they have been previously unacquainted. Should the jemadars observe any persons constantly going up and down the road and attaching themselves to parties, they will communicate the circumstances to their superiors, who will make such inquiries and pass such orders as may be requisite. *Rule 15.* In cases of emergency, the jemadars may despatch a sowar to carry information to the next station, whence another sowar shall proceed with the same to his superior; but, as a general rule, the sowars, burkundazes, and chokeedars, will be kept to their duties of patrol, protection of lives and property, and prevention of crime on the road. *Rule 16.* Should any of the jemadars, sowars, or others of the road police require temporary leave of absence, from sickness or on private affairs, they may be allowed to place their own nominees as substitutes whilst they are absent; provided that their superior sees no objection, and that such nominee is personally capable of performing the duties. *Rule 17.* All promotions shall be given as much as possible in the force, so as to give encouragement to the subordinate officers to evince activity vigilance and efficiency in the performance of their duties. *Rule 18.* Every man in the force may be transferred from one station to another at the discretion of the authorities. *Rule 19.* For the apprehension of parties who have committed offences on or near the road, or for any other police business relating to the road or its neighbourhood, the road police have concurrent authority with the police of the districts on either side. *Rule 20.* The marhalas and station houses of the road police will be white-washed, and over each will be painted in large letters, both in the English and native languages, its number and

country men passing along the road.

Caution to travellers against strangers.

ties.

Expresses.

Leave of absence.

Promotions.

Transfer of officers.

Concurrent authority

numbered

(a) The mode of proceeding adopted by the Shahabad and Behar dacoits is as follows:—They set out from their villages to a place of rendezvous, and then go singly, or in small parties, down the road, generally with only lotahs, clothes, and a small sum of money amongst them. They supply themselves with lattees which are sold on the road-side, and they either send out spies to see what carts are coming, or they have informants at some of the chuttees. They commit their dacoities early in the evening, if they have opportunity, and immediately after make off with their plunder to the bed of some river or nullah in the jungles, in which they bury their booty, easing themselves round and near the spot, so as to prevent persons approaching it. Part of the gang then returns, or may go on to commit another robbery. Those with the booty, after staying near the place for a day, remove it, and proceed by bye-roads through the jungles to their homes, halting during the day on the banks of a stream, in the sands of which they conceal the property. If, therefore, timely notice of a robbery is sent to the authorities and districts Westward of the place of occurrence, there will always be some chance of recovering the property and securing part of the gang. The Shahabad dacoits have not been known to come on the road lower than Gulsee Chuttee.

Uniform of police. the name of the magisterial jurisdiction to which it belongs. The chokeedars, burkundazes, and sowars of the road police will wear red turbans and kumurbunds, with badges indicating their number and rank on red cross belts edged with green. The jemadars will have a red stripe on the right arm. Govt. Bengal, June 1853.

Western Provinces.

Measures to be taken for the supply of provisions, and for the protection of the travellers, and of the

travellers.

Encamping grounds.

Serais, police not to interfere with;

and not to levy fees from travellers using.

Bhatiaras.

Marhalas.

Beat of chokeedars.

Chokees.

to be brought on the road.

Duty of chokeedars and burkundazes.

Travellers may be furnished with serais, chokeedars, who are to be paid for.

Tuhseeldars

of
trate.

Duty if complained
be preferred
1.

2187. Rules have been laid down in the Western Provinces for the supply of provisions and for the protection of travellers along the grand trunk road; and effectual measures are required to be taken in every district to protect the people from oppression on the part of civil and military servants of the government and other travellers who may pass along its course. Encamping grounds are prepared, and the collectors are required to see that proper supplies are provided at the burdasht-khanas. Zumeendars and others are encouraged to build serais; and the police are strictly prohibited from interfering in regard to them, so as unduly to favor any party, or to derive to themselves a profit from the undertakings. Their watch is to be kept outside the buildings; and they are not to enter them in their official capacity, unless to repress evident breaches of the peace, or otherwise in the execution of their regular duty. They are strictly prohibited from levying any dues from travellers who may alight at serais, or from compelling them to resort to particular places. Bhatiaras are to be protected in the fair exercise of their calling; and measures are to be taken to enforce the same payments to them from government officers as are demanded from other individuals. Marhalas, close to the road, and consisting of two rooms and a verandah in front, are to be built at the distance of two miles the one from the other. Each marhala is to contain a burkundaz and two chokeedars, who are always to be present at night; and each chokeedar, is to have charge of a mile's length of road immediately contiguous to the marhala on either side. Chokees of larger dimensions, and with accommodation for a jemadar, two sowars, and several burkundazes, consisting of six rooms, and stabling for two horses, are to be erected at convenient posts. The tuhseeldares and thanas are to be brought as much on the grand trunk road as may be consistent with other public objects. It is the duty of the chokeedars and burkundazes to afford protection to all travellers with merchandize or goods, who may stay for the night at puraos or other established halting places in their vicinity; but they must be strictly prohibited from compelling travellers to stop at any particular place; nor must they be allowed to make any charge for the protection they afford. Travellers, who require separate chokeedars for the protection of their baggage or tents at the established encamping grounds, are to be furnished with them at a settled price by the officers of the collector's establishment who is stationed on the spot. For such chokeedars the established fee must be always paid. The tuhseeldars along the road are generally invested with the powers of deputy magistrates. In that capacity it will be their duty to see that all provisions are punctually paid for, and that all coolies and hired chokeedars receive their proper wages. In the event of any complaints being preferred to them of non-payment, or ill-treatment, on the part of troops or travellers, they will immediately bring the circumstances to the notice of the party, against whom the complaint is lodged, either verbally or in writing; and, if the matter is not promptly and satisfactorily settled, they will take evidence of the facts, and will either dispose of the case themselves, or send a representation of it, with their

opinion, to the collector or magistrate, as may be necessary. They will further exert themselves to prevent all exactions on the part of the chokeedars, or burkundazes, or other officers of government on the road, whether directed against residents in the vicinity, traders or shopmen located on the road, or travellers passing along it. They will bring to the notice of the collector or magistrate all instances of misconduct of this nature, with their recommendation as to the proper notice to be taken of the offence. On the occurrence of any crimes upon the road, especially where travellers are concerned, it will be the duty of the deputy magistrates to enter upon the case directly, so that the parties may suffer no unnecessary detention. If the case be within their competency, they will dispose of it at once; otherwise they will send the criminal with the proceedings to the magistrate for his final orders, and will suffer all others, who are concerned in the case, and may be no further required, to pass on. The magistrate will pay particular attention to the characters of the police officers, who may be stationed along the road, and he will suitably encourage the deserving. The collector and magistrate himself, or one of his best qualified assistants, will make it a point to visit the halting-grounds, and the chokees, serais, and other public buildings, along the road as often as may be practicable; and during the cold weather some responsible person should, if possible, be charged with the duty of moving along the road, and seeing that existing rules are observed. Govt. Order *W. P.* No. 1695, April 28, 1848.

To prevent exactions.

Duty on the occurrence of any crimes on the road.

Magistrates to pay attention to characters of police officers; and to visit grounds

2188. A collector or magistrate, on receiving a well-supported complaint against an officer of the army or detachment of troops, should immediately send information of it to the nearest general officer commanding a division towards which the party complained against is moving. He should at the same time furnish the commissioner of the division with a copy of his representation. Govt. Order *W. P.* No. 3484, September 27, 1851.

Duty of magistrate on receiving complaint against an officer of the army.

2189. The resort to the puraos should be left absolutely free, and exempt from any demand of fee, to all travellers with their carts and goods. The chokeedars should be paid from the sale of the refuse; and a general superintendence over the puraos should be exercised by the nearest tuhseeldar or thanadar, so that the full value of such refuse may be obtained, and applied with a view to the most safe and convenient use of the enclosures. Govt. Order *W. P.* No. 70, January 6, 1855.

Puraos.

2190. It rests with the police to remove all obstructions, as carts, waggons, and carriages, with which the grand trunk road is sometimes encumbered, and which are of the nature of public nuisances; vehicles, of which the draft cattle are being changed, should be compelled to draw up in a single line on the side of the road, and to move on without delay as soon as the change is completed. In the large towns along the road, empty vehicles must not be allowed to stand on the high road opposite to the offices of the owners, or their agents; but should be removed from the road and kept in suitable yards maintained at the expense of the owners. Every effort should be made to induce the drivers of vehicles along the road to observe the rule of keeping the left hand side of the road except when passing other vehicles, which they should do on the right hand side. Govt. Order *W. P.* No. 87 A, December 13, 1852.

All obstructions to be removed by the police.

Vehicles to keep on the proper side of the road.

SECTION VIII.

RULES FOR THE CONTROL, MANAGEMENT, AND CONDUCT OF THE POLICE
ON THE JUGGERNATH ROAD, BETWEEN JELLASORE AND POOREE.

Supervision and
control.

Magistrates and
assistants to visit
posts.

Jemadar to visit
stations,

and to keep a diary.

Patrols.

Suspicious cha-
racters.

Death from natural
causes.

Suspicious death.

Highway robbery,
or other heinous
crime.

2191. *Rule 1.* The magistrates and deputy magistrates through whose jurisdictions the road passes, have the general supervision and control of the road police within the limits of their respective jurisdictions; the immediate control of the jemadars, burkundazes, chokeedars, (or paiks,) being vested in the thana darogahs. *Rule 2.* The magistrates and deputy magistrates are required to make arrangements for having occasional visits paid to the road police posts by themselves or their assistants, or other competent officers. These visits should be arranged so as to take the police unawares, and effectually test their vigilance. The thana darogahs are required to visit the road police posts at least twice in every month, and to report the result to the magistrate. *Rule 3.* Each jemadar has the immediate control of the burkundazes, chokeedars, (or paiks) within his beat. *Rule 4.* The head quarters of each jemadar will be at the central station of his beat, and he is required to visit every station within his control at least once in every 2 days, and to see that the burkundazes, chokeedars, &c., are on the alert. The jemadars will keep a diary of their proceedings. *Rule 5.* Two men from each station (whether burkundazes or chokeedars) will patrol the road in opposite directions every morning and evening, until they meet the patrol of the adjacent station; when they will return to their post, reporting what they may have seen, or what has occurred. The hours for patrol will be regulated by the magistrates according to the season of the year, and a diary will be kept at each station, in which will be entered the names of the patrolling officers, the hour of their departure from and return to the station, and their report of what has occurred. *Rule 6.* It is the duty of the road jemadars to watch the movements of suspicious characters, to take notice of all complaints of robbery, theft, and violence, occurring along the line of road within their respective beats, and to apprehend persons charged with the commission of such offences, giving immediate notice to the thana darogahs. *Rule 7.* In case of the death from natural causes of any traveller who may have no companions to take charge of his property, the burkundaz of the station nearest to the spot shall transmit the property without delay to the jemadar of the beat, who will forward it with a report of the circumstances to the thana darogah. The jemadar will enter all such property in a book to be kept for the purpose. *Rule 8.* In the case of any suspicious death, or of any corpse being found on the road with marks of violence on it, the body shall, if possible, be sent to the head quarters of the district or sub-division for medical examination. The jemadar is to proceed to the spot, and send notice to the jemadars on each side with a description of the person of the deceased, and the police shall use every endeavour to ascertain by whom he was last seen and in what company. *Rule 9.* On the occurrence of high-way robbery, dacoity, or other heinous crime on the road, the burkundaz

of the station shall immediately despatch one chokeedar with intelligence to the thana and another to the next station, whence the intelligence shall be conveyed from station to station, until it reaches the road jemadar. The latter will at once proceed to the spot and endeavour to procure a clue to the offenders, but on the arrival of the thana police, he will make over the inquiry to them, together with whatever information he may have obtained.

Rule 10. On the occurrence of any crimes on the road, especially where travellers are concerned, the magistrates and deputy magistrates will enter upon the case directly, so that the parties may suffer no unnecessary detention.

Parties not to be unnecessarily detained.

Rule 11. It is the duty of the road police to prevent all obstruction to the road by the stopping of carts, or otherwise. At the halting places, or elsewhere, carts, and other carriages stopping are to be carefully drawn to one side of the road, and the centre kept sufficiently free to admit of two carriages passing abreast.

Obstructions to be removed.

Rule 12. The jemadars, burkundazes, and chokeedars, are strictly required to afford protection to all travellers who may stop in their vicinity. *Rule 13.* In cases of emergency, the jemadars may despatch a burkundaz or chokeedar to carry information to the next station; but, as a general rule, the burkundazes and chokeedars will be kept to their duties of patrol, protection of lives and property, and prevention of crime on the road.

Protection to travellers.

In emergency information may be sent by officers.

Rule 14. Should any of the jemadars or burkundazes of the road police require temporary leave of absence (not exceeding a month) on account of sickness, or urgent private affairs, they may be allowed to place their own nominees as substitutes whilst they are absent, provided that their superior sees no objection, and that such nominee is personally capable of performing the duties. If leave of absence for a longer period than one month is required, the nomination will rest with the magistrate. *Rule 15.* All promotions shall be given as

Leave of absence.

Promotion.

much as possible in the force, so as to give encouragement to the subordinate officers to evince activity, vigilance, and efficiency in the performance of their duties. *Rule 16.* Every man in the force may be transferred from one station to another at the discretion of the magistrate. *Rule 17.* For the apprehension of parties who have committed offences on or near the road, or for any other police business relating to the road or its neighbourhood, the road police have concurrent authority with the police of the districts on either side. Govt. Order Bengal, No. 477, March 3, 1854.

Transfer of officers.

Concurrent authority.

CHAPTER III.

OF POLICE DUTIES.

SECTION I.

OF RECORDS, DIARIES, AND REGISTERS TO BE KEPT AT THE THANA.

Regulations of government to be preserved, and promulgated.

2192. The police darogahs and mohurirs are enjoined to bind up separately from all other records, and to preserve with care, the several regulations of government, which are sent to their respective thanas; and they are also to cause the same to be publicly read for general information, and to take every favorable occasion of promulgating the rules therein contained. Reg. XX. 1817, sect. 8, cl. 1.

Rules for keeping, and inspecting the thana books and registers, by and receiving, and by the strate and his assistants.

2193. The books and registers, alluded to in the following clauses of this section, are to be kept up with regularity at the several police thanas; and darogahs and mohurirs on their appointment to police stations, are required to inspect the records, and to report to the magistrates on the general state of the thana papers within ten days of receiving charge. Every police darogah, or thana mohurir, receiving charge of the records of a police station, is to sign a list of the records delivered over to him, which is also to be signed by the officer delivering over charge; and the list so authenticated by their joint signatures is to be transmitted to the magistrate. An exact counterpart, authenticated in the same way, is to be kept at the thana. The magistrates and their assistants, and the joint magistrates, who occasionally visit the thanas, are to avail themselves of any opportunities that may offer to inspect the records; and in the event of their being found defective, or of any gross neglect in the care of them, the darogah and mohurir, who appear culpable, are to be liable to dismissal, or to a fine, according to the circumstances of the case. Reg. XX. 1817, sect. 8, cl. 2.

Blank books to be furnished for diaries;

2194. The police darogahs are severally to be furnished with blank books for diaries: each book containing 100 pages, to be signed and numbered by the magistrate's assistant, if on the spot, or in his absence by the serishtadar, or other head ministerial officer of the magistrate's court. Reg. XX. 1817, sect. 8, cl. 3.

In which every occurrence is to be noted.

2195. Every occurrence which is brought to the knowledge of the officers of police is to be entered in the thana diary on the day on which the event is communicated to the thana; and, if no incident be communicated, it is to be so noted in the diary. Reg. XX. 1817, sect. 8, cl. 4.

Particulars to be therein,

2196. The darogahs are to enter in their diaries the names of all persons whom they apprehend, the crime or misdemeanor with which they are charged, the date of their apprehension, and the date on which they are dispatched to the magistrate. Reg. XX. 1817, sect. 8, cl. 5.

2197. The purport of every petition, representation, complaint, or information presented to any officer of police, is to be recorded in the diary, whether the same is cognizable by the native officer of police or otherwise: and if it is proved that a darogah has apprehended any person, or issued orders, or done any official act, which he has not inserted and truly stated in his diary, or that any occurrences have been wilfully omitted, he is to be punished by dismissal from office, or by such other penalty, as the circumstances of the case appear, under the general regulations, to require. Reg. XX. 1817, sect. 8, cl. 6.

to be entered therein.

Penalty omission presentation.

2198. Every entry made in the diary is to be attested by the signature of the individual by whom it is recorded. Reg. XX. 1817, sect. 8, cl. 7.

Entries how to be attested.

2199. The officer presiding at the thana is to be careful to report to the magistrate at least a month before the diary books are likely to be written through, in order that fresh blank books may be furnished to the thana without delay. Those diary books which are completed are to be deposited in the records of the thana. Reg. XX. 1817, sect. 8, cl. 8.

Report for new diary books, when required.

2200.. A book is to be kept containing copies of all urzees, kyfeeyuts, reports, and returns made by the officers of the thana establishment to the magistrate's court. Reg. XX. 1817, sect. 8, cl. 9.

Books to be kept for copies of reports to magistrate;

2201. A book is to be kept containing copies of all perwanas, and orders of every description, received from the magistrate's court. Reg. XX. 1817, sect. 8, cl. 10.

for copies of magistrate's orders;

2202. A book is to be kept containing copies of all chalans, or despatches of prisoners and property forwarded to the magistrate's court, drawn out agreeably to the forms Nos. 2 and 3 (Nos. 12 and 13 of appendix C). Reg. XX. 1817, sect. 8, cl. 11.

for copies of chalans;

2203. An abstract register is to be kept of robberies, and other heinous offences, ascertained to have been committed within the jurisdiction of the thana, in each month, drawn out in the form No. 4 (No. 14 of appendix C).^{*} Reg. XX. 1817, sect. 8, cl. 12.

for register of heinous offences;

^{*} *v. para. 2209 et seq.*

2204. A book is to be kept containing copies of all lists of stolen property delivered into the thana by prosecutors and others. Reg. XX. 1817, sect. 8, cl. 13.

for copies of lists of stolen property;

2205. A register is to be kept, according to the form No. 5 (No. 2½ of appendix B), of offenders who have broken jail, or have otherwise eluded the pursuit of justice, and for whose apprehension orders have been received at the thana from the magistrate's court. Reg. XX. 1817, sect. 8, cl. 14.

for register of firars;

2206. A list is to be kept of the names of the villages comprised within the limits of the thana, showing the names of the proprietors and of the village watchmen, agreeably to the form No. 6 (No. 19 of appendix B). Reg. XX. 1817, sect. 8, cl. 15.

and for list of vil-

SECTION II.

OF RETURNS, REPORTS, AND STATEMENTS, TO BE FURNISHED BY
POLICE OFFICERS.

- Extract from** 2207. An extract from the thana diary, and from the abstract register of robberies and other heinous offences (No. 4 above prescribed), containing the entries during the month, is to be prepared *verbatim*, and transmitted to the office of the magistrate on or before the 5th of every ensuing month. Reg. XX. 1817, sect. 9, cl. 1.
- offences, to be sent monthly to magistrate ;**
- and also a list of thana officers entitled to pay.** 2208. Together with such monthly reports, the darogahs are to forward, under their official signature, and in charge of a burkundaz, a list of the police officers on the thana establishment, entitled to receive pay from government for the past month, after the form No. 7 (No. 22 of appendix B). This list the burkundaz is to deliver to the treasurer of the foudaree court, on his receiving the pay of the thana establishment, which is forthwith to be conveyed to the darogah, or other police officer in charge of the thana, who is to pay the amount due to the several individuals of the establishment, and to transmit their receipts with his own in a paper corresponding in substance with the form above mentioned, to remain with the records of the magistrate's court. Reg. XX. 1817, sect. 9, cl. 2.
- Rules for their payment.**
- Rules for preparing abstract monthly statement of heinous crimes.** 2209. In preparing the abstract monthly statements of heinous offences, according to form No. 4 (No. 14 of appendix C), the darogahs are to pay strict attention to the following rules. Reg. XX. 1817, sect. 9, cl. 3.
- Classification of** 2210. The darogahs are, as far as is in their power, to distinguish wilful and malicious murder (*kull-and*) from every other species of homicide, reporting all cases of murder not accompanied with robbery or burglary under the 5th head, and cases of homicide of every other description, excepting homicide in affrays, under the 11th head of the statement. Reg. XX. 1817, sect. 9, cl. 4.
- of malicious wounding, or violent corporal in-** 2211. Under the 6th head the darogahs are to insert all cases of wounding, or violent corporal injury inflicted maliciously, and not in the prosecution of robbery or burglary, or during an affray. Reg. XX. 1817, sect. 9, cl. 5.
- of affrays, riots,** 2212. Under the 12th head of the statement all affrays and riots are to be entered, in which any considerable number of persons has been concerned, or in which any person has been killed or wounded, and the public peace has been disturbed ; but it is not necessary to include in this column cases of assault and battery, or drunken broils, in which only a few individuals have disputed, and no very serious personal injury has been sustained. Reg. XX. 1817, sect. 9, cl. 6.
- broils ;**
- of the various kinds of burglary ;** 2213. Under the 13th and 14th heads of the statement all cases are to be entered, in which any person enters or attempts to enter by day or by night, by breaking into any dwelling-house, warehouse, storehouse, or other building or place used for the custody

and preservation of property, whether the same be constructed of stone, brick, mud, bamboo, grass, or other materials, or into a tent, boat, or other place of habitation, whether such entry be effected by cutting through or under the wall, or by forcibly raising the roof of the house, or by any other means attended with breaking, and whether in pursuance of the intent to commit such robbery any property be carried away or otherwise. Reg. XX. 1817, sect. 9, cl. 7.

2214. Under the 17th head all cases are to be entered of receiving, vending, or concealing, or melting down stolen property. Reg. XX. 1817, sect. 9, cl. 8. of receiving stolen property ;

2215. The 18th head of the statement is to include only those cases of arson, in which any habitation or other property appears to have been purposely and maliciously fired; and the darogah is not to include accidental fires under this head. Reg. XX. 1817, sect. 9, cl. 9. of arson and accidental fires ;

2216. Under the concluding or 20th head of the statement, the darogah is to insert all cases in which the person destroyed appears to have been the immediate and voluntary cause of his own death. Reg. XX. 1817, sect. 9, cl. 10. and of suicide.

2217. The darogahs are to report in the statement above prescribed all heinous offences which come to their knowledge, whether the offenders are apprehended or otherwise; and are to distinguish in the third column all attempts in which the criminal intent has failed, inserting in the second column only those cases in which the crime has been actually perpetrated. Reg. XX. 1817, sect. 9, cl. 11. All heinous of-

2218. A monthly report of crimes and offences, agreeably to the form No. 4 (No. 14 of appendix C) is to be transmitted by the darogahs from each thana to the superintendent of police for the division, on or before the 5th of the ensuing month. Reg. XX. 1817, sect. 9, cl. 12. superintendent of police.

2219. The reports and returns submitted by the police officers to the magistrates are to be written in a clear and legible hand, and are to bear at the foot of the writing the date of the despatch, according to the era current in the district, and the signature of the police officer by whom the report is made, and, when the circumstances admit, the seat of the thana: all examinations taken and proceedings held are to be superscribed with the date and month of the era current in their several jurisdictions. Reg. XX. 1817, sect. 9, cl. 13. Rules for writing and dating reports, returns, and examinations.

2220. The papers transmitted by the police officers to the foudaree court are to be strung on a thread, the ends of which are to be secured with wax; and the record of each case is to be made up in a separate envelope, and addressed to the magistrate of the district; the name of the thana, from which the report is made, is to be marked on the envelope. Reg. XX. 1817, sect. 9, cl. 14. Rules for the transmission of papers to the foudaree court.

2221. Every process and order addressed by a magistrate to a police officer is to limit a certain time, in which it is to be served, executed, and returned to the magistrate's court. Reg. XX. 1817, sect. 9, cl. 15. Magistrate to limit the time the execution of each order.

2222. The returns to all orders and processes, and the certificates of the due publication of all proclamations, addressed by the magistrates to the police officers, are to be endorsed, as far as the size of the paper will admit, on the original order or process; and if ed as far as ble on the back of

the original perwana: and registered.

the length of the return renders it necessary, a separate piece of paper is to be annexed to the original document; and a copy of the return is to be entered in the register prescribed in cl. 9, sect. 8, of this regulation (para. 2200). Reg. XX. 1817, sect. 9, cl. 16.

If delay in making returns to order is unavoidable, the cause is to be reported at the expiration of the given time.

2223. The police officers are, to the extent of their ability, to carry into effect such instructions as they receive, within the period specified in the magistrate's order; and if the directions contained in the order or process cannot be entirely carried into effect within the time limited, a report is to be made, at the expiration of such period, of the cause of delay, with specific information when a further and a full return will be made; and the original order or process is to be sent to the magistrate, with such final return, endorsed as directed above. Reg. XX. 1817, sect. 9, cl. 17.

Reports to be accurate and concise.

2224. The darogahs and mohurirs are to be careful to render their reports and returns in as precise terms as possible, and they are to refrain from recapitulating in their returns a detail of the magistrate's orders; and, when referring to such orders, are merely to state summarily the nature of the case and the date of the perwana. Reg. XX. 1817, sect. 9, cl. 18.

If the returns to

2225. No precise rules can be laid down for the returns to perwanas; but any police officer, unnecessarily taking up the time of the magistrate with long reports, is to be entered in the minor register*; and such conduct, if persisted in, should cause dismissal. C. O. No. 138 of vol. 3, rule 7. *L. P.*

ment

* *v. para 2066.*

Every important occurrence is to be noted.

2226. The police officers are to report concisely, but clearly, all important occurrences which take place within their jurisdiction, considering that an important part of their duty. C. O. No. 138 of vol. 3, rule 8. *L. P.*

But all reports are to be abridged as much as possible.

* *See paras. 2281 et seq.*

2227. The magistrates are to enforce the observance of the rules laid down in C. O. No. 138 of vol. 3,* for abridging the proceedings of police officers. These rules being deemed of much importance, the magistrates are expected to be particularly careful that they are not neglected, and to call to account such officers as may persist in not conforming to them. The session judges are to avail themselves of every opportunity to point out to the magistrates any instances of neglect of the rules in question, which they may observe when they have occasion to refer to the proceedings of the police in cases committed to the sessions or called for by them. C. O. No. 23 of vol. 4. *L. P.*

Thana reports to be sent direct to the superintendent.

2228. Darogahs are to transmit their thana reports direct to the superintendent of police, and not through the magistrate. C. O. Sup. Pol. *L. P.* No. 5 of 1840.

Serious cases only are to be reported by darogahs to the superintendent.

2229. Darogahs are to report to the superintendent of police at the time the occurrence of serious cases only, such as murders, dacoities, affrays, highway robberies, and heavy burglaries and thefts in which a prosecution is desired by the person whose property has been stolen. C. O. Sup. Pol. *L. P.* No. 23 of 1843.

SECTION III.

OF THE ZUMEENDAREE DAK.

2230. To facilitate the communication between the magistrate's court and the stations of the darogahs, and to enable the magistrates to obtain speedy information of the occurrence of crimes, as well as with the view of preventing the unnecessary confinement of persons, who are detained in custody pending an inquiry of the police officers, or trial before the magistrate, the magistrates and native officers of police are required to attend, as far is practicable, to the directions contained in the following rules. Reg. XX. 1817, sect. 10, cl. 1.

Importance of facilitating communication.

2231. The superintendence of the despatch by dâk of perwanas to the darogahs, and of reports from the officers of police to the magistrate's court, is to be entrusted to the nazirs of the criminal courts and to the thana mohurirs, who are to be held responsible for the speedy transmission of the packets to and fro ; and are to report to the magistrates all instances of delay which come to their knowledge. Reg. XX. 1817, sect. 10, cl. 2.

Superintendence of dâk vested in nazirs and thana mohurirs.

2232. As far as circumstances admit, the magistrate's orders to his police officers, and the thana reports, whether addressed to the magistrate or to the superintendent of police, are to be transmitted by the government dâk ; and all dâk officers in the Company's provinces are required to receive and convey, free of expense, such orders and reports, the same being superscribed with the name and official designation of the public officer by whom the papers are despatched, together with the words "Kar Sirkar" to denote that they relate to the public service. Reg. XX. 1817, sect. 10, cl. 3.

Official orders and reports are to be transmitted free of expense.

2233. In cases where a thana is situated at a considerable distance from the route of the government dâk, the magistrates in communication with their police officers are to establish dâk stations between the thanas, or from the thanas to the magistrate's court at proper distances, according to local circumstances, but not in any instance exceeding five coss ; and the land proprietors and farmers of land, or their local managers, are to be called upon to name and appoint the requisite number of peons or paiks (not being village watchmen) for the performance of this duty. In places where no establishment of regular police officers is stationed, they are also to be required to fix on a particular house in the village where the peons or paiks may at all times be found without delay, and to name the mundul, putwaree, or other person in the village, whose business it is to be to receive and forward the papers transmitted by the dâk. A statement after the form No. 8 (No. 23 of appendix B) is to be kept up at each thana ; and it is the duty of every darogah, on his appointment to a thana, to see that this paper is included in the records of the thana, as well as that the dâk for the conveyance of the magistrate's perwanas and the thana reports is duly regulated, and the peons or paiks maintained by the landholders, farmers, or managers, at the appointed stages. Reg. XX. 1817, sect. 10, cl. 4.

Establishment of subordinate dâk stations.

Peons and paiks to be appointed by landholders, and dâk houses to be established.

Darogah to see that the establishment is properly

are to be charged in the monthly contingent bills of the magistrate's office. In the *Lower Provinces*, the judicial officers are to provide the requisite coolies for the conveyance of the records, and are to indent on the judge for the expense incurred thereby: and a chalan under the signature of the judicial officer, exhibiting the date of transmission to the thana and the number of misls, is to accompany the records for the purpose of showing whether there has been any delay on the part of the police in forwarding them to the sudder station. C. O. No. 162 *W. P.* and No. 192 *L. P.* of vol. 3.

2242. The above order is not to be acted upon at those moonsiffie stations, at which there is a government dāk for the transmission of letters and parcels. C. O. Sup. Pol. *L. P.* No. 5 of 1845.

This rule not apply where there is a government dak.

2243. *Rule 1.* Wherever any local establishment may be maintained for the conveyance or delivery of the police, revenue, or other official communications, it shall also be made use of for the conveyance and delivery of private correspondence, and be designated a district post. *Rule 2.* All office or road establishments, attached to any district post, will be under the control and management of the officer to whom they may be entrusted by the local government. *Rule 3.* Such police stations and other public offices, as may be selected by the local government, shall be constituted district post offices; but this shall remain under the management and supervision of the same officials who are at present in charge of them. *Rule 4.* A letter box, with a slit in the top or side shall be fixed in a conspicuous place *outside* of every district post office. The words "letter box," in English and the vernacular of the district shall be painted on each box in legible characters. [Due precaution must be taken to have the boxes properly secured to the wall. C. O. Government *Bengal*, No. 21, June 6, 1855.] *Rule 5.* All letters (except those to be specially registered,) intended for despatch from any district post office, must be dropped into the letter box. No receipt will be given. Every letter posted at a district post office must have its proper postage stamp affixed to it. *Rule 6.* Any person wishing to post a registered letter at any district post office can do so on payment of a registry fee of four annas, in addition to the ordinary postage chargeable on the letter, according to its weight. A receipt in the proper form must, in all cases, be given to the poster of a registered letter, whether it be demanded or not. One anna of the registration fee will be allowed to the officer registering the letter, the remaining three annas must be sent with the letter by the same day's despatch to the nearest post office. *Rule 7.* Every district post office will be supplied by the post office department with registered letter covers, forms of receipt and of register, and with the rules relating to registered letters. *Rule 8.* Except when it may be opened for the purpose of taking out the letters preparatory to their despatch, the letter box shall remain locked, the key being in custody of the person in charge of the office. *Rule 9.* Fifteen minutes before the hour at which the despatches of the office are usually made up, the letter box will be opened and the letters in it taken out. Those addressed to places to which there is a direct communication through the district post will be separated from all other letters, sorted and packed in covers addressed to the officer in charge of the district post office from which they will be delivered. The remaining letters will be made up into one packet and addressed to the nearest post office with which he has a communication. *Rule 10.* A

Rules relating to the receipt, despatch, and delivery of letters by district

Control.
District post offices.

Letter box.

No receipt given.

Registry.

Letter box to remain locked;

and to be opened 15 minutes before despatch.

Chalans ;

chalan or letter bill in the vernacular (Form 1)(a) will be sent with every packet despatched from a district office to a post office. The deputy post master or person in charge of the post office will, after satisfying himself that the contents of the packet agree with the chalan, copy the entries into his register, sign, and by the next day's despatch return the chalan. The receipted chalans will be filed and form the only record in any district post office of the despatches made from it. *Rule 11.* All chalans are to be numbered consecutively in a series, commencing on the 1st of May; and if any district post office is in the habit of sending packets to more than one post office, the chalans sent to each post office will be numbered in a separate series. *Rule 12.* All letters sent from one district post office to another will be accompanied by a chalan (Form 2),(b) which will be receipted and returned

to be numbered ;

Form 1.
DISTRICT POST.
CHALAN No. .

Letters despatched from
District Post Office to
Dated
District Post Office.
185 .

No. of Letters.		No. of Rates of Postage.	POSTAGE.					
			Despatching Office.			Receiving Office.		
	Paid Letters,							
	Paid Newspapers,							
	Registered Letters,							
	Total,							

C. D.,
Post Master. Post Master.

N. B.—The receiving officer is invariably to enter the correct amount in the column of postage, whether it agrees with the despatching office or not.

(b)
Form 2.
DISTRICT POST.

Letters despatched from the District Post Office at
CHALAN No. .
Dated
to the Post Office at
of
185

No. of Letters.
No. of Rates of Postage.
POSTAGE.
Despatching Office. Receiving Office.

Unpaid Letters returned, ..
Unpaid Newspapers returned,
Total,
Paid Letters posted at this Office, ..
Paid Newspapers ditto ditto, ..
Paid Letters returned, ..
Paid Newspapers returned, ..
Registered Letters returned, ..
Total,

C. D.,
Post Master. A. B.,
Post Master.

N. B.—The receiving officer is invariably to enter the correct amount in the column of Postage, whether it agrees with the despatching office or not.

to the despatching office, to be filed as a record. *Rule 13.* All letters received at any post office, to the address of persons resident in the same district, but beyond the limits of any ordinary post delivery, will, if the post office be at the head-quarters of the district, be sent with a chalan (Form 1) to the officer in charge of the district post, to be by him sorted and forwarded to the district post offices of the several sub-divisions in which the residence of the addressees may be situated. *Rule 14.* Persons in charge of post offices in the interior of districts receiving letters for persons residing beyond the limits of their ordinary delivery, but within the sub-division of a district post office with which they have direct communication, will send them, if pre-paid, for delivery to that office, with a chalan (Form 1)(a). Letters for persons resident in the district, but within a sub-division with which the receiving office has no direct communication, must be sent to the post office of the head-quarters of the district. All letters bearing postage for delivery in the interior must be sent to the post office at the head-quarters of the district. *Rule 15.* Officers in charge of district post offices will carefully compare with the chalan the contents of every packet received. If the chalan is correct, it will be receipted and returned; if not correct, the discrepancies will be noted thereon. *Rule 16.* A delivery book (Form 3)(c) showing the names of persons entrusted with the delivery of letters, will be kept in every district post office, and be the only record of letters received for delivery. *Rule 17.* Letters will be delivered by such persons and under such rules as the local government may from time to time determine. Every person, through whom any district post letter may be delivered, is authorized to receive a fee of one pice (a fourth of an anna) for his own use, in addition to any unpaid postage which may be due on it. *Rule 18.* All postage realized on letters sent from any post office for delivery through the district post will be remitted every Saturday to the post office at the head-quarters of the district with the remittance

Letters received at post office for residents beyond ordinary delivery.

Contents of packet to be compared with chalan.

Delivery book.

Fee for delivery.

Postage realized.

(c)

Form 3.

DISTRICT POST.

CHALAN No.

Letters despatched from the Post Office at _____ to the District Post Office at _____
Dated _____ of _____ 185 .

No. of Letters.		No. of Rates of Postage.	POSTAGE.		
			Despatching Office.		Receiving Office.
	Paid Letters,				
	Paid Newspapers,				
	Paid Registered Letters,				
	Unpaid Newspapers,				
	Unpaid Letters,				
	Total,				
			C. D.,		A. B.,
			Post Master.		Post Master.

N. B.—The receiving officer is invariably to enter the correct amount in the column of postage, whether it agrees with the despatching office or not.

Letters which cannot be delivered.

Unpaid letters not to be sent from one district post office to another.

Returns of letters received for delivery.

book (Form 4)(d). The person in charge of the post office will give a receipt for the amount in the opposite column and return the book by the first despatch. At the close of the month, a balance will be struck, showing the postage still due to the post office on letters which have been received; this balance will be brought forward and a new account commenced on the 1st of the following month. *Rule 19.* All letters, which from any cause cannot be delivered, will be returned with as little delay as possible to the post office from which they were received, and if any unpaid postage be due on them, credit for the amount will be taken in the remittance book. Unpaid letters are never, under any circumstances, to be sent from one district post office to another. *Rule 20.* A monthly memorandum (Form 5)(e) showing the number of letters received for delivery at each district post

(d)

Form 4.
DELIVERY BOOK.

Date.	Names of Peons to whom Letters for delivery are made over.	UNPAID LETTERS FROM POST OFFICE.		UNPAID NEWSPAPERS FROM POST OFFICE.		PAID LETTERS.		PAID NEWS-PAPERS.		Total Number of Letters paid and unpaid.	Total Number of Newspapers.	Signature of Delivery Peon.
		Number.	Postage to be collected.	Number.	Postage to be collected.	No. of Paid Letters for Post Office.	No. of Paid Letters for other District Post Office.	No. of Paid Newspapers for Post Office.	No. of Paid Newspapers for other District Post Office.			

A. B., Post Master.

(e)

Form 5.
REMITTANCE BOOK.
Account between Post Office and District Post Office.

Date.	Postage due on unpaid Letters sent for delivery.			Remittance from District Post Office to Post Office.			Postage on Letters returned.			Total Remittance received.			Date of Receipt.	Signature of Post Master.	Signature of Officer in charge of District Post Office.	Remarks.	Abstract.		
	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.							
Balance,																	Cash received during month, Postage due on unpaid letters returned, Balance due.	Rs.	A. P.

A. B., Post Master.

office, will be prepared by the person in charge and sent on the 2nd of the following month to the officer in charge of the post office at the head-quarters of the district. Persons in charge of post offices will prepare similar memoranda and send them to the post office at the head-quarters of the district. The officer in charge will, before the 15th of each month, prepare a general statement showing the number of letters posted at, and delivered through the agency of the district post office in the preceding month. Order Govt. India, August 12, 1854.

2244. A supply of postage stamps, for sale by retail, is to be kept available at every thana, and every police station at which letters are received for despatch; and it is the duty of the officer, to whom the person in charge of any such station is subordinate, to take steps to ensure that the supply kept on hand is at all times equal to at least one week's demand. No account current of postage stamps is to be kept at any subordinate depôt. Officers in charge of treasuries, when selling stamps to other venders for distribution to the public, are invariably to require cash on delivery. To all purchasers of stamps of the value of nine rupees or more an allowance is to be made of four annas from every nine rupees paid. Rule passed by the Govt. of India in C. O. Asst. Acct. Revenue No. 837, July 29, 1854.

Supply of
age stamps
kept at every police
station.

SECTION IV.

OF IRREGULAR PRACTICES.

2245. No police darogah, mohurir, jemadar, or burkundaz, is to trade or to keep any warehouse, or shop for wholesale, or retail, within the limits of the thana to which he is appointed. Reg. XX. 1817, sect. 11, cl. 1.

Police officers
are not to trade;

2246. The practice of police officers taking leases of land from the zumeendars of the district is prohibited. Any act of this kind is to be considered tantamount to an act of corruption; and the person guilty of it is to be removed altogether from the police force. C. O. Sup. Pol. L. P. No. 7 of 1840.

nor to take lease
of lands from the
zumeendars of the
district.

2347. The darogahs are prohibited from employing the burkundazes of their thanas on their own private affairs, under penalty of fine and dismissal from office. Reg. XX. 1817, sect. 11, cl. 2.

Darogahs not to
employ burkundaz-
es on their private
affairs.

2248. Whenever a summons or warrant, or other criminal process, is served by a burkundaz, or other police officer receiving pay from government, no diet money or other allowance or gratuity is to be demanded or received from the complainant or the accused, or from any witness or other person; and the demand or receipt of such by any police officer, directly or indirectly, in violation of this rule, is punishable as a criminal offence

Police officers
are liable to what
penalties.

on conviction before the magistrate or sessions court. The offender is also compellable, either on a criminal prosecution, or by a civil action, to refund the amount received, besides being liable to immediate dismissal from office, under the provisions contained in the existing regulations. Reg. XX. 1817, sect. 11, cl. 3.

Darogahs are not to be entertained in the villages they visit.

2249. Magistrates are to prevent the custom of the inhabitants of a village entertaining the darogah and his numerous followers, when he proceeds into the interior. C. O. No. 321 vol. 1.

Landholders are not to be allowed to keep established vakeels at the thanas.

2250. The darogahs are enjoined, under the penalty of dismissal from office, not to permit any established vakeel or mokhtar to be permanently employed at their thanas on the part of any landholder, farmer, local agent, or other person. But this rule is not meant to preclude the occasional employment of a vakeel, or mokhtar, for any specific purpose when it is necessary. Reg. XX. 1817, sect. 11, cl. 4.

Police officers are not to employ mokhtars at the magistrate's office, without permission.

2251. The darogahs and other police officers are prohibited from employing any mokhtar or vakeel at the station of the magistrate, for the purpose of receiving and transmitting the salaries of the thana establishment, or for any other purpose connected with their public functions, except in particular cases, wherein they are especially authorized by the magistrate to employ a vakeel. Reg. XX. 1817, sect. 11, cl. 5.

Police officers are not to employ extra mohurirs, without permission, except in special cases.

2252. No mohurirs or writers, excepting those on the police establishments paid by government, are to be employed at the thanas without the previous sanction of the magistrate, except in cases of emergency which will not admit of delay. In the event of any darogah requiring the assistance of additional mohurirs, in consequence of a stress of business, he is to report the circumstance for the orders of the magistrate. Reg. XX. 1817, sect. 11, cl. 6.

Penalty for disobedience to this rule.

2253. In all cases where an additional mohurir is employed improperly (for in some instances it may be necessary) the darogah should be punished first by fine, and, if the offence is repeated, by dismissal. Letter of Superintendent Police *L. P.* to Joint Magistrate of Pubna No. 1944, Sept. 14, 1849.

Police officers are not to employ professional spies; and are to apprehend persons giving out that they are employed by the magistrate as goindahs. But they are to encourage persons to give information.

2254. The darogahs are prohibited from encouraging, or employing, without the express sanction of the magistrate, any goindahs or spies, who earn a livelihood by the profession of an informer; and they are to apprehend, and send to the magistrate, any persons who give out that they are employed as goindahs by the magistrate, or by the superintendent of police, unless such persons show a written authority from the magistrate or from the superintendent of police. The above provision is not to be construed as precluding the police officers from employing persons to trace offenders, who have eluded the pursuit of justice; or from encouraging persons to furnish information, by which robbers or other known criminals may be discovered and apprehended. On the contrary the darogahs are to encourage such persons to communicate all the information possessed by them, and are to report to the magistrate any instance of meritorious service on the part of any such individual, by which offenders are brought to justice, whether the individual has personally exposed himself to trouble and risk in securing the offender, or has merely

supplied the necessary intelligence to the police officers.(a) Reg. XX. 1817, sect. 11, cl. 7.

2255. It has been a general practice for bawds, keepers of brothels, and other persons who retain young females for the purposes of prostitution, and for persons moving loundis, or alleged slave girls, from place to place, to register at the nearest thana the names of all those, whom they purchase, procure, or entice to remain with them. Darogahs and other police officers are strictly prohibited from keeping any such register, or allowing any list of such girls to be delivered to, or the girls to be brought before them at any place whatever, as such a practice leads to a belief that the police have authority to interfere with such persons, and to give their alleged owners an illegal power over them, while it is besides open to many other kinds of very gross abuse. Any police officer disobeying this injunction is to be immediately and finally removed from his situation. C. O. Sup. Pol. *L. P.* No. 18 of 1841.

Police officers are not to allow the registration before themselves of girls kept for the purposes of prostitution.

2256. Any police officer apprehending the female relations or connections of persons accused of offences, or detaining them in custody on insufficient grounds, is to be punished by fine or removal from office; and any officer punished more than twice for this offence is to be removed altogether from the police, and the case reported to the superintendent of police in order to prevent his future employment. C. O. Sup. Pol. *L. P.* No. 9 of 1842.

Female relations of persons accused of offences are not to be apprehended.

2257. Police officers are prohibited from interfering in regard to the transfer of cattle and other goods bought and sold. Const. No. 747.

Interference in the transfer of cattle and goods is prohibited.

2258. The system of compelling all dagees and tekorahs to sleep under the surveillance of the police, or zumeendars, is prohibited. Govt. order on the police report for the first six months of 1838, page 230. C. O. Sup. Pol. *L. P.* No. 14 of 1839.

Dagees are not to

SECTION V.

OF CHARGES NOT COGNIZABLE BY POLICE OFFICERS.

2259. Darogahs and other native officers of police are prohibited, under pain of dismission from office, from taking cognizance of any charge of adultery, fornication, calumny, abusive language, slight trespass, or inconsiderable assault. Reg. XX. 1817, sect. 12, cl. 1.

(a) "I also wish, but I fear in vain, that the darogahs without encouraging goindahs could be induced to pay some attention towards the acquirement of knowledge of their jurisdictions, so as to have some idea of those amongst the community who live by plunder and theft. I believe that the agricultural classes in these provinces are not, unless driven to the act by famine, addicted to crime, but that they are more free from such pursuits than the generality of the same class in other countries. It is the lower castes, given to drinking, separated from the rest of the people, and degraded in all their habits from the prejudice against them, who are the principal participators in the graver offences against property, and in burglaries and thefts. These men are well known to the village communities; their herdings together, sudden accession of money always spent in debauchery, cannot be concealed; but unfortunately from this class our chokeedars are principally drawn; and it is owing to this village watch, and to the apathy or worse of the police in making enquiries regarding them, that so many crimes are committed with impunity." Extract from police report *L. P.* for the first 6 months of 1841, para. 708.

of abortion not to be in- by the death

2260. Charges of abortion, or of procuring it, are not of a heinous description, unless death ensues; and, where this is not the case, such cases partake of the nature of those specified above, and should therefore not be investigated by police officers without the special orders of the magistrate. In general the investigation of such charges should be conducted by the magistrate, rather than by the police officers. C. O. No. 303 of vol. 1. N. A. R. vol. 1, page 349 *note*.

2261. Such charges may not be entered into by police officers, although the enquiry originated in the discovery of the body of a murdered infant, the one case having no connection with the other. N. A. R. vol. 2, page 464.

Application of the above rule to charges of rape.

2262. Although rape is among the offences which the magistrate is prohibited from referring to the police by Reg. VII. 1811, yet, as it is not mentioned in the above provisions among the charges not cognizable by them, such case may now be legally referred to them for investigation, or may be preferred directly at the thana. Const. Nos. 1174, and 1365.

No enquiry to be of

2263. Police officers are strictly prohibited from making any inquiries into the circumstances of fires, except when charges of arson are preferred to them. C. O. No. 85 of vol. 2.

Police not to interfere in petty offences, except as required by the regulations.

2264. Police officers are not to interfere with petty offences in any way which is not positively required by Reg. XX. 1817, or other regulation enacted for their guidance. C. O. No. 331 of vol.

Police officers how to proceed on such charges being preferred.

2265. Persons preferring to the native police officers charges of the nature specified above, are to be referred by those officers for redress to the magistrate's court, and informed that cognizance cannot be taken of their complaints at the thana; and the darogah or other police officer, to whom any such charge is presented in writing, is to record in the thana diary (*v. para.* 2195) the name of the complainant, the nature of the charge, and the date on which it is rejected. The date and ground of rejection is also to be endorsed on the written plaint to be returned to the complainant. Reg. XX. 1817, sect. 12, cl. 2.

Police not to admit compromises, nor to interfere in any matter not authorized, nor to inflict punishment, nor to exact money.

2266. The darogahs and other police officers are likewise prohibited from admitting compromises, or razeenamahs, in any cases; and from interfering in any matter which is not expressly provided for in this, or in any other regulation; as well as in all cases from passing sentence upon any complaint; from imposing a fine, or inflicting any punishment; and from making any exaction from the prosecutor or the accused, or their respective witnesses, or from any other persons whatsoever. Reg. XX. 1817, sect. 12, cl. 3.

Heinous offences not to be settled by private adjustment.

2267. Police officers are prohibited from suffering accusations of heinous offences(*a*) to be settled by private adjustment; and are enjoined to bring all such cases to the knowledge of the magistrate. In this case, the prisoner allowed a thief to compound his offence; but his motive in so doing not being considered corrupt, he having officially reported the circumstances, he was merely reprimanded. N. A. R. vol. 1, page 180.

(*a*) In cases of theft and burglary, the person defrauded is now not obliged to prosecute; and it seems that in such cases under the present law compromises are to a certain extent allowable. See *para.* 2276.

SECTION VI.

OF CHARGES COGNIZABLE BY POLICE OFFICERS.

2268. On receipt of any charge or information of murder, robbery, theft, burglary, homicide, maiming, wounding, actual affray, or other heinous offence, not excepted by this regulation from the cognizance of the police darogah, the statement of the prosecutor or informer is to be certified on oath, or solemn declaration* [after the forms Nos. 5 and 6 of appendix C]; and such enquiry is to be made as is necessary to elucidate the circumstances of the case, and if there are any witnesses to the fact, or persons acquainted with the particulars, they are to be questioned, without oath, either privately and apart, or publicly, as appears most conducive to the attainment of the truth. Reg. XX. 1817, sect. 13, cl. 1.

Enquiry to

* v. para. 501.

Police officers are strictly prohibited from receiving criminal charges unattested by oath [solemn affirmation]. A strict adherence to which rule, particularly in a case like the present [abortion], appears essential for the protection of individuals against malicious and unfounded accusations. N. A. R. vol. 1, page 349.

The charge
be made upon oath.

2270. As the offences of forgery, or procuring the commission of it, come clearly within the general description of heinous offences, not excepted from the cognizance of a police darogah on a charge or information on oath to that effect before him, he is bound to proceed to the investigation of such charge in conformity with the general rules prescribed for his guidance. C. O. No. 303 of vol. 1.

zance

2271. In cases of burglary and theft, unattended with personal violence, it is not lawful for darogahs or other police officers to make the local inquiry heretofore required by sects. 13 and 15, Reg. XX. 1817, or to apprehend persons suspected of such offences, unless a petition on unstamped paper is presented to them by an individual injured, (a) requesting that a search may be made for the property stolen, or that the offender or offenders may be brought to punishment; or unless an express order to adopt measures for those purposes is received by them from the magistrate to whom they are subordinate. Reg. II. 1832, sect. 2, cl. 2.

cases of
burglary
written request for
prosecution.

2272. It is not sufficient that the complainant appears in person and deposes to the theft or burglary; he must present a written petition, and that petition must contain not only a statement of the fact, but also a specific request either that search may be made for the stolen property, or that the offenders may be apprehended and brought to punishment. Const. No. 708.

The petition re-
quiring interference
of police in such
cases must be writ-
ten.

2273. The proceedings on a trial of simple burglary were declared void *ab initio*, in consequence of the investigation having been conducted in contravention of Reg. II. 1832; as no petition had been presented by the prosecutor, nor had any instructions to investigate

In cases of bur-
glary, the proceed-
ings are illegal

(b) By Mahomedan law a thief cannot be punished even on his own confession, unless the person robbed comes forward to prosecute. Hed. Trans. vol. 2, page 112.

the case been issued by the magistrate; and the prisoners were therefore acquitted. N. A. R. vol. 6, page 35.

The suffering
of burglary and
theft.

2274. In cases of burglary and theft unattended with personal violence, the suffering party is not bound to report the case to the police, unless he is a zumeendar, and has to report the occurrence in that capacity. Const. No. 1338.

Chokeedars are
all cases
to their
knowledge.

2275. Chokeedars are not exempted by these rules from the duty of reporting the commission of such offences to the police, who are still bound to report all cases that come to their knowledge to the magistrate. But the magistrate should make use of other sources of information than his police officers to discover crimes, and should use his utmost endeavors, by conciliation and kindness, to procure the co-operation of respectable landholders and their agents in the detection of offenders. C. O. No. 130 of vol. 2.

When darogahs
may refrain from
apprehending and
forwarding prison-
ers accused of theft
or burglary.

2276. Darogahs and other police officers are empowered to postpone apprehending and forwarding to the magistrate, pending the receipt of his orders, persons charged with theft, whether attended with burglary or otherwise, provided it appears that the offenders have not used any personal violence in the occurrence; and provided that the parties, against whom the offence has been committed, express their desire that the offenders should not be apprehended and conveyed before the magistrate; provided also that the offenders have not previously been actually guilty of, or suspected of, having committed theft, or burglary, or robbery. Reg. XII. 1818, sect. 7, cl. 1.

But every such
case is to be re-
ported to the ma-
gistrate, who is to
decide whether it is
to be investigated.

2277. Every case of this nature is to be fully and immediately reported by the police officers to the magistrate, who is either to call for any further information which he judges proper, or is at once to determine, according to the circumstances of the case, whether it is or is not necessary for the ends of justice that the charge should be regularly investigated, and is to issue his orders accordingly. Reg. XII. 1818, sect. 7, cl. 2.

The magistrate
may always direct
inquiry to be made.

2278. Though a police officer cannot make enquiry into unaggravated cases of burglary and theft without a written application from the injured party, yet the magistrate may direct the police officer to make the enquiry whenever he considers it advisable to do so. (a) Const. No. 1354.

By what circum-
stances the discre-
tion of the magis-
trate is to be guid-
ed in such cases.

2279. In the exercise of that discretion the magistrate is to be governed by any extenuating circumstances which appear, such as the youth of the offender, his having been prompted to the offence (more especially in times of scarcity and famine) by extreme distress, and by his character appearing to have been previously respectable. Under less favorable circumstances the magistrate is also to attend to the important object of preserving the honor of families, when the offender is nearly connected with the party who has suffered

(a) "Indiscriminate investigation into these cases is never productive of good effect, whilst it inflicts much inconvenience on the people." *Opinion of Sup. Pol. in police report for the 2nd six months of 1841, para. 5.* In some districts the provisions of Reg. II 1832 are almost entirely set aside, and in others no cases are investigated but those in which the parties apply to the court. Both these modes of carrying the law into effect are, I think, equally erroneous. The magistrates should in cases coming under this law exercise the discretion vested in them with great care, and only direct investigation where the offence is of a serious or aggravated character, or where the occurrence of numerous crimes, in particular divisions of the district, renders their interference necessary for the repression of the offence and greater security of property. *Police Report for the first six months of 1840, para. 853.*

the injury, and the latter is anxious to exempt the offender from the infamy of a public ignominious punishment. Reg. XII. 1818, sect. 7, cl. 3.

2280. It is not to be considered necessary to take down in detail the questions and answers of the witnesses, but the substance of any material information obtained from them is to be reduced to the form of a sooruthal or kyfeeyut, which document is to be authenticated by the attestation of the persons examined, and transmitted to the magistrate under the signature of the police officer, by whom the inquiry is made; the evidence of the eye-witnesses being distinguished in the report from that of persons deposing from hearsay. Reg. XX. 1817, sect. 13, cl. 2.

Rules for the recording of evidence by the police officers.

2281. In all cases cognizable by the police, the depositions of the informant or plaintiff, or of both, are to be immediately taken at length; the police officers being careful to enquire from them particularly what they saw themselves,—what they learnt from others,—who the persons were from whom they learnt it,—the prosecutors' witnesses, and what evidence each witness is supposed to be capable of giving. In cases of dacoity, highway robbery, theft, and burglary, the list of property lost must invariably accompany the plaintiff's deposition; and the above papers must be forwarded to the magistrate immediately on being received, or at the latest within 12 hours from the period of their being written. C. O. No. 138 of vol. 3, para. 3, rule 1; *L. P.* and No. 28 of vol. 4, *W. P.* C. O. Sup. Pol. *L. P.* No. 19 of 1843.

Depositions of the informant and plaintiff to be taken at length; and what particulars to be noted.

2282. With a view to test the trustworthiness of the final police report, the police officer should be required, in all heinous cases to transmit to the magistrate a separate statement on the day on which he may obtain information as to any new material witnesses, or as to a charge or suspicion being made against or found to attach to a fresh party accused; showing briefly the nature of such information, with the parties from whom, and the circumstances under which it was obtained. Such reports of progress could not afterwards be tampered with, a contingency not infrequently to be apprehended in the instance of the *final* reports. But they should be confined to the express point designed to be made known, and should not be allowed to swell the papers of a police enquiry or to protract its duration. C. O. No. 1047, August 10, 1854. *W. P.*

Immediate report to be made of any fresh information or ground of suspicion.

2283. The sooruthals required in sects. 14 and 15, Reg. XX. 1817, or in cases of dacoity describing the appearances presented, and the facts brought to light in a *prima facie* inquiry, are to be sent to the magistrate, in place of a report, the moment they are drawn up. C. O. No. 138 of vol. 3, para. 3, rule 2; *L. P.* and No. 28 of vol. 4, *W. P.*

Sooruthal to be sent to the magistrate immediately in place of report.

2284. The depositions of witnesses are not to be detailed in the papers sent to the magistrate, and the summary of them is to be given in the simplest form. For example, in a case of highway robbery with murder:—

witnesses.

Nuzzer Allee, Peer Bux, and Govindram deposed to having witnessed the deed;—

Doorga, Ewoz Jan, and Ruttun recognize the property;—

Sheolal and Gooroo Das witnessed the search of the prisoner's house;—

Sujut Ali and Gungadeen saw the prisoner running off with a drawn sword in his hand;—

Janokia Dosadh Chokeedar arrested the prisoner, and saw marks of blood on his clothes.

At the bottom of this summary, the darogah is to enter the names of those witnesses whom he examined, but who professed ignorance, or gave evidence so unimportant as not to require their being sent in. C. O. No. 138 of vol. 3, para. 3, rules 4 and 5 ; *L. P.* and No. 28 of vol. 4. *W. P.*

Rule regarding witnesses for the defence.

2285. It is not the duty of a thanadar to send for witnesses for the defence, or to postpone a case for their attendance. Still where, in particular cases such exculpatory evidence might be of itself forthcoming or near at hand, and it should appear proper to record it with a view to a fuller elucidation of the facts, and where such procedure should not involve the illegal detention of the accused beyond 48 hours, there is nothing in the regulations prohibitory of the adoption of such a course. Govt. Order *W. P.* No. 2217, May 23, 1855.

Grounds for sending in prisoners to be noted in the

2286. In sending in the prisoners, at the close of an enquiry, the darogah is to enter his grounds for so doing (without any recapitulation of evidence) in the column for remarks on the chalan No. 2 of appendix to Reg. XX. 1817 (No. 12 of appendix C). C. O. No. 138 of vol. 3, para. 3, rule 6 ; *L. P.* and No. 28 of vol. 4. *W. P.*

Reports to be concise and clear ; and all delays to be severely punished.

2287. The darogahs are informed that all excuses for delay in preparing and copying out voluminous reports being obviated by the above rules, any breach of the regulations in the detention of arrested persons, or any slowness in the enquiry, will be severely dealt with. They are also to report concisely, but clearly, all important occurrences which take place within their jurisdiction, considering that an important part of their duty. C. O. No. 138 of vol. 3, para. 3, rule 8 ; *L. P.* and No. 28 of vol. 4, *W. P.*

Magistrates and session judges to see that the rules for abridging police proceedings are not neglected.

2288. Magistrates are to be particularly careful that these rules for abridging the proceedings of police officers are not neglected, and should call to account such officers as persist in not conforming to them. The session judges should avail themselves of every opportunity to point out to the magistrates any instances of neglect of these rules, which they may observe in proceedings before them. C. O. No. 23 of vol. 4. *L. P.*

What report is to be made in cases which are not proved.

2289. In cases when the darogah does not think the case sufficiently proved to warrant the transmission of the accused parties to the magistrate, he is to send in the *substance* of the evidence of each witness ; the statements of the plaintiff and defendants, the latter taken at length ; and a clear statement (without recapitulating any evidence) of the grounds of his opinion for releasing the accused. C. O. No. 138 of vol. 3, para. 3, rule 9 ; *L. P.* and No. 28 of vol. 4. *W. P.*

In certain cases a sketch of the spot is to be prepared ; and date and time of occurrence to be noted.

2290. In cases of murder, gang-robbery, burglary attended with wounding, or other violent crime, [or of a charge or information of any of the offences specified in sect. 16, Act XXXII. 1855, regarding embankments*] where the circumstances of the case may be elucidated in a greater degree by a sketch or plan of the spot, the same is to be prepared, if it can be done without subjecting the inhabitants to inconvenience, and submitted with the report. The police officers are also to be careful to ascertain, in all cases, the exact date and time of the day or night when the offence charged was committed ; and are to record the date according to the Bengal, Fussily, or other era current in the district. Reg. XX. 1817, sect. 13, cl. 3.

2291. Attention is required to the preparation of these sketches; a scale should be adopted for the purpose of showing the relative distance of one object from another. A house and a tree need not be represented by precisely the same diagram. These are to be sent to the nizamat adawlut with all cases referred or appealed. C. O. No. 52 of vol. 4. *W. P.*

Such sketches to be prepared with care.

2292. The weapon or instrument with which a murder has been committed, or the remains of poisoned food, or other articles which it will be necessary to produce and identify during the proceedings, must be obtained and secured in such a manner that their identification may be established without doubt. Reg. XX. 1817, sect. 14, cl. 10. Reports *W. P.* 1854, part 2, page 766.

Identification of articles to be produced in court.

2293. Darogahs are prohibited from swearing witnesses to the truth of their depositions on any local investigation which is made by them into the circumstances of any murder, robbery, or other crime, or in the performance of any other of their duties, unless the same is expressly sanctioned by the provisions of a regulation applicable to the case. Reg. XX. 1817, sect. 13, cl. 4.

Darogahs are not to administer oath except in particular cases.

2294. The officers of police are to endeavour, as far as practicable, to complete the inquiry in the first instance, and to collect all attainable evidence, and to bind over all the witnesses, necessary for the trial, to appear before the magistrate, at the time when the report may reach the magistrate's court, in order that the case may be tried without unnecessary delay. The darogah is to send in with the chalan or despatch any burkundazes, or other subordinate police officers, whose evidence is necessary on the trial of the case; and if the whole of the witnesses cannot be found at the time of transmission of the chalan, the darogah is to endeavor to collect them, and is to send them in without waiting the instructions of the magistrate. Reg. XX. 1817, sect. 13, cl. 5.

Darogahs are to endeavour to collect all evidence, and to secure the attendance of witnesses so as to prevent delay.

2295. In cases where the offenders are unknown, or though recognized have not been apprehended, the prescribed local inquiry is notwithstanding to be made without delay, and the police darogah is to transmit an immediate and full report of the result to the magistrate for his information and orders. But the witnesses are not in such cases to be sent to the magistrate, nor bound over to attend him without his special instructions for the purpose. Reg. XX. 1817, sect. 13, cl. 6.

When the offenders are unknown, the witnesses are not to be sent in without the order of the magistrate.

2296. In all cases where the offender is known and has absconded, the police officer conducting the enquiry is to ascertain and describe the person of the offender, specifying also his name, and that of his father, as well as his usual place of residence, in order that he may hereafter, if necessary, be fully identified. Reg. XX. 1817, sect. 13, cl. 7.

Description of absconded offenders to be carefully given.

2297. If, in the conduct of an inquiry, the person accused or suspected appears to have been guilty of more than one offence cognizable by police officers,—or if any misconduct or neglect in matters of police attaches to any zumeendar, farmer, local agent, village watchman, or other person whose duty it is to aid the police,—the darogah is to institute a distinct enquiry on each case, the result of which is to be transmitted to the magistrate in separate reports and despatches. Reg. XX. 1817, sect. 13, cl. 8.

Separate report if two offences are proved, or if zumeendar or cho-keedar is guilty of neglect.

2298. Whenever any person is apprehended and sent to the magistrate's court under the provisions of this regulation, and it is known to the darogah, or other officer presiding

When defendant has been formerly

apprehended, it is to be noted.

at the thana, that such person has been apprehended on a former occasion by the police on any other account, the darogah reporting on the case, which is the ground of his present apprehension, is also to state the offence for which the prisoner was arrested, and if practicable is to ascertain from the thana papers and report the year and date of the record of the case referred to. Reg. XX. 1817, sect. 13, cl. 9.

Rules when darogahs leave their thanas.

Dates to be noted in the current era of the district.

2299. The darogahs, when they proceed from their thanas for the purpose of making any local inquiry, or for the performance of any other public duty, are to state in their reports the date and time of their departure from the thana station, and the date and time of their arrival at the place of their destination, and also of their return to the thana. The month and year to be used on all such occasions, as well as generally in the reports of the darogahs, are to be those of the current era of the district, whether the Bengallee, Fussily, or Willaity. Reg. XX. 1817, sect. 13, cl. 10.

may leave their thanas without permission.

2300. The system of prohibiting darogahs from leaving their thanas without permission, except on the occurrence of heinous offences, is bad, and ought not to be pursued. Govt. Order on police report for 1st six months of 1838, page 226.

When darogahs are away from their thanas, they are to send daily reports to the magistrate.

2301. The darogah when engaged in the mofussil is to forward daily to the magistrate a memorandum of his proceedings in the most concise form. For example:—"May 2, 1843. Passed the night in the village cutcherry at Syedpore; at 10 A. M. proceeded to Mouzah Ramnugger, and examined the putwarree, head ryots and others, named in the margin, regarding the bad characters in their village, and their whereabouts on the night of the robbery: returned to Syedpore at 5 P. M."—"May 3, 1843. Arrested Sheo Lal, and Deen Tewarec; took their replies, and confronted them with the plaintiff Gungadeen and the witnesses named in the margin, who recognized them as concerned in the dacoity; searched their houses, and found property as per list recognized by the prosecutor and his witnesses." C. O. Sup. Pol. L. P. No. 19 of 1843.

What reports are to be sent by the darogah to the superintendent of police, in serious cases

2302. On proceeding to investigate any serious case, the darogah is to send forthwith to the superintendent of police a notice of his departure, stating the nature of the crime, the name of the accused as far as then ascertained, and the names of the persons or person giving the information.* On closing the case he is to report, if he has sent in any prisoners in the form No. 2 of Reg. XX. 1817, the parties sent in, the dates of their several apprehensions, and other circumstances laid down in that statement;—or if he has not procured evidence to justify his sending in the accused, he is to forward to the superintendent, in as concise a form as practicable, the grounds on which he has exercised his discretion, in such manner as to avoid all recapitulation of evidence and unnecessary verbiage. It is the duty of the magistrate to keep a strict watch over the proceedings of his subordinates, so as to be able to furnish the superintendent of police with such information regarding their proceedings as he thinks necessary to call for. C. O. Sup. Pol. L. P. No. 13 of 1843.

Magistrate to keep a strict watch over his police.

the of police on the propriety of magistrate ordering second investigation

2303. With regard to the mode of investigating cases the superintendent of police recorded the following remarks. "The description of cases wherein the police are apt to misbehave is generally in regard to suspicious deaths, accusations of miscarriage of females by drugs, and other similar crimes. In such cases the statements sent in by the police

are often of a doubtful nature, and it is perfectly justifiable and right to order a second investigation; but there should be no threat, and no indications to lead the people entrusted with the second inquiry to believe that their credit and service depend upon proving the case instead of proving the truth. To order investigation after investigation, and to punish the darogahs for want of success, not only tends to induce the belief that the case has been made up for the nonce, but destroys the possibility of any credit being given to evidence, although in reality correct and true." Police report for the 1st six months of 1838, para. 79. Reports *W. P.* 1854, part 2, page 253.

2304. It is not favorable to the ends of justice to censure, suspend, or supersede police officers, who may have been unsuccessful in the early detection and development of a crime with the investigation of which they are charged; such failure of success by no means necessarily implying neglect or defect of good management; and urgent authoritative requirements for further enquiry, and for the acquisition of good proof, being capable of being misconstrued and abused on the part of the police officer in the production and presentation of very doubtful if not actually false evidence. C. O. No. 1047, August 10, 1854. *W. P.*

Remarks on the punishment of police officers for want of success.

SECTION VII.

OF INQUESTS.

2305. In all cases of murder, unnatural or suspicious death, or violent and dangerous wounding, the darogah is to make it an invariable rule, immediately on receiving information, to repair in person to the spot on which the dead body, or person wounded, has been found; or, if prevented from going personally, is to depute a proper officer; and on such occasions the following rules are to be strictly observed. (a) Reg. XX. 1817, sect. 14, cl. 2.

On receiving information in certain cases the

2306. They are to question privately in the first instance any relations, connections, friends, or neighbours of the deceased, or of the person wounded, who may be able to state the circumstances of the case; and they are to endeavour to collect, before the inhabitants assemble for the public inquest, such information as may guide their inquiries in the conduct of their investigation. Reg. XX. 1817, sect. 14, cl. 3.

Private to be made before holding inquest.

2307. They are to question the individual wounded, and to require him, if he is able to speak, to name and describe on solemn affirmation the person by whom he has been wounded, the names of the persons present when the act was committed, and, generally, the circumstances under which the act was committed. Reg. XX. 1817, sect. 14, cl. 4.

Persons

(a) When a person is found dead in any place, and it is not known who was the murderer, and his heir demands satisfaction for his blood from the inhabitants of such place, or from any number of them not specifically named, fifty of the inhabitants selected by the heir must be put upon their oaths, and depose to this effect—"By GOD I did not kill him, nor do I know his murderer." *Hed. Trans. vol. 4, page 427.*—The above describes the only inquest known in Mahomedan law.

for in-
the body
ed or
wounded person.

2308. They are to examine the body of the person wounded, or dead body, with a view to ascertain the number of wounds or other corporal injuries; the length, breadth, and depth of each; with what weapons the wounds or hurts have been given, and the parts of the body in which they have been received; and they are to record the same either at the foot of their sooruthal or report, or on a separate paper to be annexed to the report. Reg. XX. 1817, sect. 14, cl. 5.

Wounds not to
be probed.

2309. The practice of probing wounds on the bodies of wounded or deceased persons in order to ascertain their length, breadth, and depth, is prohibited: police officers are expected to report these particulars merely from inspection. C. O. No. 9 of vol. 4.

Rules for in-
specting the spot
in which the body of
deceased or wound-
ed person has been
found.

2310. They are to describe particularly the spot on which the wounded person or the dead body has been found; and they are to report whether the crime appears to have been committed on the spot, or whether the individual wounded, or dead body, appears to have been brought and laid there; also in cases of alleged suicide or accidental death, whether the circumstances under which the body is found are such as to warrant a conclusion, that the deceased met with his death from his own hands, or by misadventure, or whether any and what grounds exist for believing the deceased to have been killed by the hands of others; and further, they are to ascertain the name of the person wounded, or of the deceased, if any person present should recognize him. Reg. XX. 1817, sect. 14, cl. 6.

If the deceased be
a stranger.

2311. If the person killed appears to be a stranger, and his name is not known, they are to endeavour to ascertain where he was last seen, or where he slept the night before. Reg. XX. 1817, sect. 14, cl. 7.

If the offenders
or
bore
the de-
ceased or wounded
person.

2312. In cases in which the offenders are not immediately discovered, or the cause of the murder, or unnatural death, or wounding, is unknown, the police officer conducting the inquiry is to endeavour to trace whether any enmity, ill-will, jealousy, or other cause of dissension, subsisted between the wounded, or deceased, and any other person or persons in the neighbourhood, and, if so, the particulars of the disagreement; when and under what circumstances the wounded person, or the deceased, and the person said to bear him ill-will were last seen in company, and whether any and what angry expressions were used by the parties; moreover in cases, in which there is reason to believe that the unknown offender has received any wound or other corporal injury from resistance in the perpetration of the crime, they are to question the hajjams, village-surgeons, washermen, or other persons residing in the vicinity, who from their profession are likely to afford information leading to the discovery of the offender in such cases. Reg. XX. 1817, sect. 14, cl. 8.

Enquiries to be
made when the un-
known offender has
been wounded.

The above inqui-
ry to be written as
a sooruthal, and
to the magis-

2313. The above inquiry is to be made and committed to writing in the presence of creditable people, resident on the spot or in the neighbouring villages; and the police officers are to require a sufficient number of persons present to subscribe their names to the paper, which is likewise to be attested by their own signature, and forwarded without delay to the magistrate. Reg. XX. 1817, sect. 14, cl. 9.

....., in
place of a report.

2314. The sooruthal above required is to be sent to the magistrate, in place of a report, the moment it is drawn up. C. O. No. 138 of vol. 3, para. 3, rule 2; L. P. and No. 28 of vol. 4. W. P.

2315. In cases of murder it is the duty of the police officers to endeavour to obtain and secure the weapon or instrument with which the crime has been committed, in order that the same may be produced, and identified, at the further stages of the enquiry or trial for the offence. Reg. XX. 1817, sect. 14, cl. 10.

In cases of murder the weapon not be procured.

2316. In cases of wounding, the police officer conducting the inquiry is to endeavour to obtain for the person wounded such surgical assistance as is procurable; and, if the wounds are severe, the individual wounded is not to be moved or sent to the magistrate's court, until he is able to travel without inconvenience or risk. The police officers are further directed to notify to the inhabitants, as occasion offers, that, in the event of any person being wounded by robbers or others, in such manner that he cannot be conveyed to the thana without hazard of his life, it is not necessary to remove such person from the place where he can be best taken care of, but that immediate notice is to be given at the thana, that the police officer may proceed to the spot and make the inquiry prescribed above. Reg. XX. 1817, sect. 14, cl. 11.

Assistance to be

is not to be
, until he is
with-

2317. In cases of murder or unnatural death, the darogah is, on ordinary occasions, when he has completed his inquiry, either to make the body over to the charge of the relations of the deceased, or to cause it to be buried or burnt on the spot, as the usages of the country and the religious persuasion of the deceased render proper: and it is not to be considered necessary to send the corpse for the inspection of the magistrate, except in cases of murder by poison, or on occasions where the injury sustained by the deceased is of a doubtful nature, requiring the inspection and report of a surgeon; in which cases, if the state of the weather and the distance of the magistrate's court admit of the body being transported without risk of putrefaction on the road, the darogah is to forward the corpse covered with a cloth, in the most decent and expeditious manner practicable, to the magistrate's place of residence.* Reg. XX. 1817, sect. 14, cl. 12.

Disposal of body

* For rule for
disposal of police
cases, see para.

2318. On all occasions when the timely attendance of the police officers cannot be obtained, the principal persons of the village are to hold inquests on the bodies of persons dying unnatural deaths; and they are to forward the same without delay to the magistrate either through the nearest police darogah, or otherwise, as may be most convenient. C. O. No. 21 of vol. 1.

Principal persons

sence of police officers.

SECTION VIII.

OF INQUIRIES IN HEINOUS OFFENCES.

2319. In all cases of gang robbery, or other robbery by open violence, as well as in every instance of a heinous crime, attended with a violent breach of the peace or other circumstances of aggravation, the darogah, in whose jurisdiction the offence occurs, is if practicable to proceed in person to the spot without delay, transmitting an immediate report of the occurrence and of his departure from the thana for the information of the

In of

* For reports to be sent to the superintendent of police, see para. 2802.

magistrate.* If unable to proceed in person, or if the case is not of a heinous nature, nor attended with circumstances of aggravation, the darogah is at liberty to depute a fit person from among the officers acting under him, to ascertain the facts and circumstances of the case, and to procure all the information which it is practicable to obtain for the discovery and apprehension of the offenders.(a) Reg. XX. 1817, sect. 15, cl. 1.

Notice to be sent by the police direct to the superintendent.

2320. Notice of all heinous offences, and other information ordered to be furnished to the superintendent of police by the darogahs, is to be forwarded direct by the public dāk. C. O. Sup. Pol. *L. P.* No. 5 of 1838.

Detail of inquiries to be made in such cases.

2321. The police officer, making local inquiries of the description specified above, is to be careful to ascertain and record the day and hour when the fact was committed, the situation of the place, the names and descriptions of any persons who have been recognized as the perpetrators of the crime, by whom such persons have been seen and known, and the names and descriptions of any persons suspected of being concerned in the offence committed, with the grounds of such suspicion. Also a full recital of the manner in which the crime has been effected, and in cases of robbery of the articles of property plundered; the direction in which the robbers have fled; whether they had torches, and any and what arms; whether they attempted to conceal their persons during the robbery; whether any arms or articles of property belonging to the robbers were picked up after the outrage; and if so, whether any person in the neighbourhood has recognized such articles; whether any number of persons were known to have assembled at any liquor shop, ~~keer's~~ muth, or other place, immediately preceding the occurrence of the robbery, and if so, the general character of such persons; whether the landholders and farmers or their local agents took any and what measures immediately after the occurrence for the discovery and apprehension of the offenders; whether the village watchmen were present, and showed a proper degree of attention and alacrity on the occasion, or otherwise; whether there are any persons of notorious bad character in the neighbourhood, or persons who have before been punished for robbery and discharged from jail, and if so, where such persons were at the time of the commission of the offence.(b) Reg. XX. 1817, sect. 15, cl. 2.

(a) Under sect. 2, Reg. II. 1832, such inquiries are not to be made by police officers in cases of burglary and thefts unattended with personal violence except on the requisition of the party injured, or by express order of the magistrate. See para. 2271 *et seq.*

(b) "Although I think recognition of persons at the time of perpetrating a dacoity is very properly looked on with suspicion in the courts, yet I think many circumstantial points are neglected and overlooked. The absence of the parties from their homes at the time of the dacoity, their return with money beyond their usual means, their association with known bad characters, their real means of livelihood, are points which are too much overlooked, and which, if properly attended to, would go much to corroborate other proof. Most of the dacoits are known to the villagers and local police; the former will not take any part against them, partly to save trouble and partly from fear, so long as they keep their depredations to distant villages; the latter generally are paid for their silence; and the magistrate finds it most difficult to struggle against these obstacles."—"It is difficult to procure conviction on a charge of intent to commit dacoity; something of course can be gathered from the arming and assemblage of the people, but the intent is in general to be ascertained only through the means of spies and informers. The evidence of such persons is received with great jealousy in the courts, and they usually have some portion of their own conduct to conceal or extenuate; and their characters will not generally stand the test of a cross-examination; and thus the charge falls to the ground. It would perhaps be more advisable in doubtful cases to investigate the characters of the parties engaged." *Remarks of the superintendent of police in police report for 1845, paras. 343 and 381.*

2322. The foregoing inquiries are to be made and committed to writing on the spot in the form of a sooruthal or report, and in the presence of three or more creditable inhabitants of the neighbourhood, by whom it is to be attested, and the papers are to be forwarded without delay for the information of the magistrate. Reg. XX. 1817, sect. 15, cl. 3.

Such inquiries to be written in the form of a sooruthal and forwarded to the magistrate immediately ;

2323. The sooruthal is to be sent to the magistrate, in place of a report, the moment it is drawn out. C. O. No. 138 of vol. 3, para. 3, rule 2, *L. P.* and No. 28 of vol. 4. *W. P.*

in place of a report.

2324. It is further the duty of the police officers on occasions of the description above-mentioned, as well as in cases of murder and unnatural death, to apprise the persons present at the inquiry, that their suppression or denial of any knowledge, which they possess relative to the perpetrators of the crime, will tend to invalidate their testimony in the event of their deposing to such knowledge at a future period. They are at the same time to give encouragement to all persons, not accomplices or accessaries, who have been present at the commission of a crime, to make a full communication of every fact and circumstance within their knowledge respecting the offenders ; and they are to take their information or evidence, with such precautions of secrecy as are deemed requisite, where persons supposed to have recognized any of the offenders appear to be deterred from publicly naming them, under fear of the consequences if the parties should not be apprehended. Reg. XX. 1817, sect. 15, cl. 4.

Police officers to

instance.

Persons present at the commission of the offence to be encouraged to give evidence.

2325. The darogahs are invariably to report to the magistrate every instance of burglary and theft, which is brought to their knowledge or otherwise, as well as of the attempts in which the offenders have not succeeded in carrying off property. Reg. XX. 1817, sect. 15, cl. 5.

Every case of burglary, and theft, to be reported.

2326. In cases of burglary, the police officer conducting the enquiry is to attend to the foregoing instructions regarding inquiries in cases of robbery, as far as they are applicable, and is to be careful to ascertain and report the time of the day or night at which the offence was perpetrated, and the means used in effecting an entry into the habitation ; and, if by breaking or cutting through a wall, mat, or other partition, the length and breadth of the aperture ; also whether the house or apartment into which a burglarious entry has been effected is used as a place of residence, or for the custody and preservation of property. Reg. XX. 1817, sect. 15, cl. 6.

Accuracy to be

de-
cir-

2327. Police officers making inquiries in cases of robbery, burglary, and theft, are to require the village chokeedars, the landholders and their agents, and the inhabitants of the place where the offence was committed, to state whether they suspect any and what persons of having committed the offence ; and, if so, the grounds of their suspicion ; after which they are to take the necessary measures to ascertain how far such suspicions are well founded, and where the persons suspected have been at the time the crime was perpetrated.

Information to be required from the chokeedars, zumeendars and others.

Reg. XX. 1817, sect. 15, cl. 7.

SECTION IX.

OF CONFESSIONS, AND TREATMENT OF PRISONERS.

Examinations of
to be tak-
oath in

Rules in cases of
voluntary confes-
sion.

2328. Whenever any person is apprehended and brought before a darogah or other police officer under the provisions of this regulation, the examination of the prisoner is to be taken without oath in the presence of three or more credible witnesses, who are to attest the examination; and the police officer presiding at the enquiry is to question the prisoner fully regarding the whole of the circumstances of the case; the persons concerned in the commission of the crime; and, if any property has been stolen or plundered, the persons in possession of such property, or the place where it has been deposited. In the event of the prisoner's making free and voluntary confession, it is to be immediately written down, if practicable, in the language best understood by the person confessing, and in the presence of three or more credible witnesses, who can sign their names, and are not officers of police or connected with the thana establishment: if no persons can be found who are able to read or write, the most respectable persons in the village are to be required to bear witness, and to affix their mark in attestation of the writing. The party confessing, as well as the witnesses, are to be allowed to read the same when finished; or, if unable to read, the police officer recording the confession is invariably to read it over in the presence of the party and witnesses before it is signed and attested; and is to state at the foot of the paper the day of the week, date, hour, and place at which it is taken; the original confession bearing the signatures of the party and witnesses, is invariably to be transmitted to the magistrate, and not a copy; and the police officer presiding at the inquiry, as well as the person by whom the confession is taken down in writing, are to subscribe their signatures to the paper in attestation of its authenticity. Reg. XX. 1817, sect, 19, cl. 1.

Confessions how
to be certified.

2329. Police officers are to certify confessions made before them in the same manner as magistrates, *viz.*—"I hereby certify that this confession of — was made by the said — and taken down in writing, and attested by the subscribing witnesses, before me and in my presence, on the — between the hours of — and —; that, to the best of my belief, the confession was voluntary, and that no interference, directly or indirectly, on the part of any person likely to influence or intimidate the prisoner, was permitted." C. O. No. 54 of vol. 2, para. 21.

Language in
as

2330. Implicit obedience is required to the above rule, that confessions are to be written down in the language best understood by the persons confessing. C. O. No. 242 of vol. 1.

What persons
are to be required
to witness confes-
sions.

2331. Confessions of prisoners are to be taken at length. No persons employed about the thanas as chokeedars, dosadhs, or chumars, or other such descriptions, are to be made subscribing witnesses by the police, under penalty of forfeiture of situation. These must always be respectable men of the place; and such, if possible, as can read and write; and they should be required to question the prisoner themselves, whether he has confessed voluntarily to the facts stated. C. O. No. 138 of vol. 3, para. 3, rule 3; L. P. and No. 28 of vol. 4. W. P.

2332. If respectable persons, who can read and write, are not procurable, the darogah should record the fact. Reports *L. P.* 1855, part 2, page 540.

If respectable persons be not procurable.

2333. Police officers ordinarily should not summon the same persons to attest both the mofussil confessions of the prisoners, and the searching of their houses. Opportunities for collusion, or, at all events, for the easy imputation of it, are afforded when one set of witnesses is brought to prove these two material, but different, parts of a case. *N. A. R.* vol. 6, page 323.

The same persons are not to be summoned as witnesses to confession and to search of houses of pri-

2334. A darogah is fully justified in summoning respectable persons for the purpose of witnessing confessions, when it is requisite; and in the event of such persons refusing to attend, or to attest a confession taken in their presence, he should submit a report of the case to the magistrate; who, after calling upon the parties for any explanation they may have to offer, is competent to pass such order on the case (within the general limitation of his authority) as appears proper. But the darogahs should be particularly cautious in the exercise of this power; and should avoid as much as possible summoning any persons, whose absence from their houses, with reference to their occupations and other circumstances, might be attended with serious inconvenience. Const. No. 101.

How the is to proceed in summoning witnesses; and punishment in cases of refusal.

2335. No compulsion is to be used either towards parties or witnesses, for the purpose of obtaining any information whatsoever; and police officers are strictly enjoined not, on any occasion or under any pretext whatever, to encourage a prisoner apprehended upon a criminal charge to confess the same, or to excite the hopes or fears of a prisoner by holding forth prospect of pardon, using threats, or otherwise persuading and intimidating the prisoner, with the view of inducing him to confess. Any species of maltreatment inflicted on a prisoner or witness by a police officer, landholder, or farmer, or by any other person whatever, whether with a view to extort a confession or to procure information, is to subject the offender to exemplary punishment on conviction before the magistrate or sessions court. Reg. XX. 1817, sect. 19, cl. 2.

Compulsion, or holding or fears,

2336. Whenever a confession is taken at night, or at any other place than the police thana, the special reason for its having been so taken is to be stated in the darogah's report. Reg. XX. 1817, sect. 19, cl. 3.

Confessions taken at night, or in any other place than the thana.

2337. The foregoing provisions are not meant to preclude the darogah, or officer presiding at the inquiry, from making any private verbal examination which he deems requisite with the view of ascertaining accomplices, or discovering stolen property, or obtaining means of proof. Reg. XX. 1817, sect. 19, cl. 4.

Darogah may make private verbal examination;

2338. No regulation prohibits police officers from taking down in writing a second examination of a prisoner; and they would not be justified in refusing to record any declaration or confession, which the prisoner wishes to make. Const. No. 733.

and may take down in writing second examination.

2339. Prisoners confessing offences are to be kept apart from all persons in custody at the thana; and, if practicable, are to be forwarded to the magistrate's court under charge of a separate guard. Reg. XX. 1817, sect. 19, cl. 5.

Prisoners confessing to be kept separate.

2340. Witnesses to confessions are invariably to be bound over by the darogahs to attend the magistrate on the arrival and examination of the prisoners at the sudder station

and the police officers are to be careful not to admit of any deviation from this rule. Reg. XX. 1817, sect. 19, cl. 6.

Prisoners how to be confined.

2341. Prisoners during their detention at the thana are to be confined within the thana house or guard room, or in some other convenient place of confinement, where they are not exposed to the open air. Reg. XX. 1817, sect. 19, cl. 7.

Stocks may be used for prisoners of dangerous character in the night only ;

2342. Stocks may be used at the thanas during the night for the purpose of securing the persons of robbers and murderers, or other persons of dangerous character, or disorderly behaviour, or persons who have escaped from custody, until they can be forwarded to the magistrate; but the darogahs are strictly enjoined under pain of dismissal from office, not to place any individual in the stocks, except during the night time, and then only in cases of robbery and murder, or of previous escape from custody, or when the notoriety of the prisoner's character or his behaviour is such as to render this mode of confinement essential for his safe-guard. Reg. XX. 1817, sect. 19, cl. 8.

but in the *W. P.* only when there is no hawalat.

2343. In thanas which are provided with a hawalat upon the prescribed plan, the use of stocks is interdicted ; and in thanas, in which no other means of securing prisoners at night exist, the use of stocks is permitted only pending the construction of a proper hawalat. All magistrates are, at the same time, required to use the utmost vigilance to prevent the restraint in stocks of others than the class of persons who are indicated in cl. 8, sect. 19, Reg. XX. 1817 ; and are to instruct the thanadars to furnish a special report of all prisoners subjected to this restraint by them under the authority of the above law. Monthly vernacular summaries of these reports will be submitted by magistrates for the inspection of the commissioner. Govt. Order, *W. P.* No. 3770A, December 15, 1855.

If a woman is detained at the thana by night, a special report is required.

2344. The detention of women at the thana during the night can be necessary only under some unusual circumstances. A special report of the causes of any such detention, and of the arrangements made for the purpose, is, in every case of the kind, to be made by the thanadar to the magistrate. Govt. Order, *W. P.* No. 3770A, December 15, 1855.

Prisoners may be forwarded in light handcuffs.

2345. The darogahs of police are further competent(*a*) to use handcuffs of a light construction, to be provided by the magistrate, (instead of fetters and ropes for the legs and arms) for the purpose of forwarding heinous criminals with safety to the magistrate's court. Reg. XX. 1817, sect. 19, cl. 9.

Darogahs strictly accountable for ill-treatment.

2346. The darogahs are to be held strictly accountable for any ill-treatment which prisoners sustain whilst under their charge, and for any severity further than what is essentially requisite for securing the persons of such prisoners. Reg. XX. 1817, sect. 19, cl. 10.

If police officer be convicted of torture.

2347. The chief resident police officer of any police station at which torture is proved to have occurred, is to be liable to dismissal. C. O. Govt. *Bengal*, No. 31, Dec. 17, 1855. Whenever a police officer is convicted of torture, a report of the case in the vernacular is to be sent to every magistrate in the division for general communication to the police of

(*a*) In the Persian translation this word was originally rendered "*laxim khahud bood*," which made it incumbent on the police officers to use handcuffs ; and it was accordingly altered to "*ikhtiar-e darogah ast*." C. O. Nos. 28 and 41 of vol. 2.

their districts; and a copy is also to be sent to each of the other commissioners of circuit, for similar dissemination throughout their divisions. C. O. Govt. *Bengal*, No. 32, January 8, 1856.

2348. Burkundazes escorting prisoners are, on ordinary occasions, to journey at a rate of not less than six, or more than eight coss per diem. Reg. XX. 1817, sect. 19, cl. 11.

Rate at
prisoners are to

2349. When alighting at any village for the night, the police officers having charge of prisoners are to report their arrival to the proprietor, farmer, or head man of the village, who is to point out a proper place for securing the prisoners during the night, and to require the village watchmen to afford their aid in guarding them. Reg. XX. 1817, sect. 19, cl. 12.

How prisoners
are to be secured
at night while tra-
velling.

2350. In cases in which prisoners are unable to support themselves during their journey from the thana to the magistrate's court, the darogahs to advance such amount for diet allowance, as is necessary for their way-charges, not exceeding the rate of one anna per diem, reporting the same for the information and orders of the magistrate. Reg. XX. 1817, sect. 19, cl. 13.

Diet money may
be allowed to pri-
soners.

2351. On the arrival of the prisoners at the sudder station, the burkundazes charged with the despatch are to convey them to the foudaree nazir, or to such other native officer as the magistrate appoints, in order that they may be secured in a lock-up house, until a report of the case can be perused by the magistrate; till which time one or more of the burkundazes, who have accompanied the prisoners, are to remain in attendance to be examined, if necessary, on any points relating to the case. Reg. XX. 1817, sect. 19, cl. 14.

Prisoners to be
delivered by bur-
kundazes to the
nazir.

2352. Prisoners, who are sent from the station of one district to that of another, or who are sent by a magistrate into the mofussil, for the purpose of being discharged, are to be sent, exclusive of other papers, with a written despatch unsealed, showing the name of the prisoner and his destination; and it is the duty of the darogahs to forward prisoners of this description according to the despatch which accompanies them under charge of the police burkundazes from thana to thana. A statement of all such cases, specifying the names of the prisoners and other particulars, is to be recorded in the thana diary. Reg. XX. 1817, sect. 19, cl. 15.

Rules for the
transfer of prison-
ers from one sta-
tion to another

2353. The darogah and other officers of police are prohibited, under penalty of immediate dismissal from office, from detaining any prisoners without sending them to the magistrate, beyond such time as is indispensably requisite for the inquiries directed by this or any other regulation; and if from any cause the inquiry cannot be completed within 48 hours after the arrival of a prisoner at a cutcherry or station of the police officer, he is notwithstanding to be sent to the magistrate with a report of the case and a chalan drawn up according to the form No. 2 (No. 12 of appendix C), a copy of which is to be given to the burkundaz, under whose charge the prisoner is forwarded, to be delivered to the nazir on his arrival at the sudder station. Reg. XX. 1817, sect. 19, cl. 16.

No prisoner is
to be detained at the
thana more than 48
hours.

2354. "I would wish most particularly to call the attention of the magistrates to the necessity of preventing any police darogahs unnecessarily delaying the transmission of

any arrested person to the sudder station. I have, in numerous cases brought before me almost invariably found either extortion of money, procuring compulsory confessions, or abuse of the person of the prisoner if a female, or other malpractices, to have been the object in such illegal detention; which, besides being open to these objections, places in the hands of the darogahs the power of imposing duress of a very severe nature on parties brought before them, who may refuse to comply with their demands. No instance of detention beyond the period laid down by cl. 16, sect. 19, Reg. XX. 1817, should be allowed to pass unnoticed, and the darogah or other police officer should be made strictly accountable for any breach of the rules in this point." *Extract from police report L. P. for the first 6 months of 1841, para. 707.*

Magistrate may not authorize further detention.

2355. No discretion is now vested in the magistrate to authorize the detention at the thana of a party accused of a criminal offence, cognizable by the police, beyond the period specified above. C. O. No. 22, Nov. 12, 1855, *L. P.*; and No. 1394, October 9, 1855. *W. P.*

All apprehensions to be reported; and no person to be discharged except on bail.

2356. The officers of police are to report to the magistrate the cases of all persons apprehended within their respective jurisdictions, whether such persons have been admitted to bail or otherwise; and no person who is once apprehended is to be discharged except on bail, or under the special orders of the magistrate. Reg. XX. 1817, sect. 19, cl. 17.

Special attention to be paid to this.

2357. The superintendent of police requires especial attention to be paid to this rule, as the infraction of it is one of the chief means by which the police are enabled to extort money. C. O. Sup. Pol. *L. P.* No. 35 of 1838.

SECTION X.

MISCELLANEOUS RULES.

All circumstances to

2358. The darogahs of police are uniformly to report to the magistrates, whenever any individuals, within their respective jurisdictions, entertain in their service any extraordinary number of armed men, or commence building or repairing any fort or gurhee, or collecting together any quantity of arms, ammunition, or military stores. Reg. XX. 1817, sect. 30, cl. 1.

Encroachments on public roads be prevented and reported.

2359. The darogahs are to prevent all encroachments on the public roads, and are at the same time to report the circumstances of each case for the information of the magistrate, and to record an abstract of the same in the thanadaree proceedings. Reg. XX. 1817, sect. 30, cl. 5.

2360. The darogahs are to secure, and send to the sudder station of the district, all insane persons found within the limits of their respective jurisdictions, from whose insanity there is reason to apprehend any fatal or serious consequences, unless the friends of such persons agree to enter into engagements to adopt such precautions as shall prevent their doing mischief. In such case the police officer, to whom the engagements are tendered, is to refrain from securing the person of the insane individual, and to await the

instructions of the magistrate, to whom the circumstances of the case are to be reported without delay. Reg. XX. 1817, sect. 30, cl. 6.

2361. The officers of police are enjoined to show every mark of personal respect and attention to judges on circuit, during their progress from station to station. Reg. XX. 1817, sect. 31, cl. 1.

Judges on circuit to be treated with respect.

2362. On the arrival of any European, not in Her Majesty's or the Honorable Company's civil or military service, who proposes to settle within the limits of any thana jurisdiction, the darogah is to report the circumstance for the information of the magistrate. Reg. XX. 1817, sect. 31, cl. 2.

Arrival of Europeans to be reported.

2363. The police darogahs are, towards the close of each English year, to cause the form of statement, in English and the vernacular, No. 21 (No. 15 of appendix C) to be exhibited to all Europeans, not in Her Majesty's or the Honorable Company's civil or military service, residing within their respective jurisdictions; and are to require such Europeans to furnish for the information of the magistrate separate statements filled up according to the prescribed form either in English or the vernacular. These statements are to be forwarded by the police darogahs to the magistrate on or before the 5th of January in each year. Reg. XX. 1817, sect. 31, cls. 3 and 4. These statements are no longer required.

Annual statement to be filled up by Europeans;

and forwarded by darogahs to magis-

2364. The darogahs of police are enjoined to afford assistance, on application from the revenue officers, for the safe custody and conveyance of despatches of treasure; and to allow such despatches to be deposited during the night, for better security, within the house allotted for the thana. Reg. XX. 1817, sect. 32, cl. 1.

Assistance to be

2365. The darogahs are likewise, as far as their other duties admit, to afford protection to despatches of treasure belonging to bankers and merchants, on application from the person in charge of the same. Reg. XX. 1817, sect. 32, cl. 2.

and by individuals.

2366. Police darogahs are not required to perform the duties prescribed by sect. 22, Reg. I. 1812 to prevent an evasion of the customs duties, i. e. endorsing the rowannahs of salt, &c. Const. No. 317.

Not required to endorse salt row-

2367. If the people of the village object or refuse to sign their names in attestation of the service of the notices, which zumeendars are required to serve in the case of putnee-tenures advertised for sale, and if there be no moonsiff, the peon serving the notices is required to go to the nearest thana, and there make voluntary oath of the same having been duly published; a certificate to which effect is to be signed and sealed by the police officers, and delivered to the peon. Reg. VIII. 1819, sect. 8, cl. 2. In other cases, as in sales of certain estates for the recovery of arrears of revenue under sects. 5 and 20, Act I. 1845, the law requires that proclamations should be stuck up in the thanas. It seems unnecessary to quote each provision, for, as a general rule, the darogah should affix in some conspicuous place in the verandah of his cutcherry-house any proclamation which is sent to him by an authority in any department of the public service.

Peon serving notices of putnees advertised for sale may swear to the fact of service before police officers.

Police officers

2368. The thanadars, police darogahs, chaprasis, &c., have no authority to call on native officers and soldiers on furlough for their leave of absence certificates, except under

of absence poys on furlough.

Apprehension of deserters. the immediate instruction of the magistrate. Commanding officers of regiments may apply for the aid of the civil authorities for the apprehension of deserters; and subordinate police officers, when duly authorized by the magistrate, are warranted in detaining persons suspected of desertion. C. O. No. 18 of vol. 2.

Darogahs to inculcate upon landholders and managers of lands their duties in giving information of crimes, apprehending and

2369. The police darogahs are to take every favorable opportunity, when employed on local inquiries, as well as on other occasions, of explaining to the zumeendars, talookdars, and other proprietors of land malgoozaree or lakhiraj; to the sudger farmers and under-renters of land, dependant talookdars, naibs, and other local agents; and to all native officers employed in the collection of the revenue and rents of land on the part of government or the court of wards; the duties incumbent on them, and the responsibility attached to them, to communicate to the magistrate and police darogahs, either publicly or secretly, all information which they obtain respecting the commission of murder, robbery, housebreaking, arson, or theft, within the limits of the estate or farm held or managed by them respectively; or respecting the resort of any known robbers of whatever description, or the residence of any notorious receiver or vender of stolen property within such limits; as well as to afford their assistance in the apprehension of all persons, for whose apprehension warrants have been issued by the magistrate; and generally to co-operate with, assist, and support the police officers of government in maintaining the peace, preventing as far as possible affrays and other criminal acts of violence, or apprehending the offenders under the rules and restrictions enacted and promulgated in the regulations. Reg. XX. 1817, sect. 33, cl. 1.

Darogah to be furnished with copies of regulations regarding the duties of such persons.

2370. To enable the police darogahs the more effectually and satisfactorily to perform the service thus required from them, the magistrates are to be careful to furnish them with copies of, or extracts from, all regulations in force on the points above adverted to, or any other immediately connected with the aid to be given by landholders, farmers, under-tenants, and managers of land, in support of an efficient police. Reg. XX. 1817, sect. 33, cl. 2.

SECTION XI.

OF PERSONS WEARING MILITARY DRESS, OR BADGES.

No person is allowed to dress his servants in the uniform of sepoys.

2371. All persons, whether European or native, within the Company's provinces (excepting such privileged persons as the government specially exempts from the operation of the rule contained in this section) are positively forbidden to dress any of their servants, either for the purpose of parade or of business, in the uniform of the Company's sepoys or lascars, or in a dress so nearly approaching to that uniform as to enable the persons wearing it to impose themselves on the country people for sepoys and lascars. Reg. XI. 1806, sect. 9, cl. 2.

2372. All natives, excepting those actually in the military service of the Company, or belonging to persons specially exempted by government from the operation of this rule, are forbidden to wear a dress similar to that mentioned in the foregoing clause. Reg. XI. 1806, sect. 9, cl. 3.

No persons allowed to dress.

2373. Officers of every description employed in the service of the Company, who are allowed establishments of burkundazes, peons, and paiks, in their official capacity, or who have occasion to employ persons of any of those descriptions in such capacity, are prohibited from clothing them with a military dress. Reg. XI. 1806, sect. 9, cl. 4.

Civil officers are not to clothe their public servants in such dress.

2374. Native officers and sepoy, excepting subadars, jemadars, and serangs, even though in the service of the company, who temporarily reside or have occasion to travel in the interior parts of the country, unless employed on the public service, are forbidden to wear their uniform coats. Reg. XI. 1806, sect. 9, cl. 5.

Sepoys are not to wear their uniform while absent from their corps, unless on public service.

2375. With a view of giving full effect to the orders contained in the preceding clauses, the military commanding officers of stations, and of detachments, in the interior parts of the country, and the magistrates, are authorized and required to deprive of a military dress any person who wears it contrary to these orders; unless it appears that such person is in the military service of the Company, in which case he is to be sent to the corps to which he belongs with a written complaint against him. The local officers of police are also empowered and directed to apprehend all persons of the above description, and to send them to the magistrate, who is to deal with them in the manner above prescribed. Reg. XI. 1806, sect. 9, cl. 6.

Persons disobeying these orders how to be treated.

2376. In pursuance of the above rules, the darogahs of police are required to apprehend and send to the magistrate all persons not actually in the Honorable Company's military service, or belonging to persons specially exempted by government from the operation of the above rules, who are found dressed in the uniform of the Company's sepoy or lascars, or in a dress so nearly approaching to that uniform as to enable the persons wearing it to impose themselves on the country people for sepoy or lascars. Reg. XX. 1817, sect. 30, cl. 2.

are persons wearing military dress;

2377. The local officers of police are empowered and directed to apprehend all native officers and sepoy, excepting subadars, jemadars, and serangs, wearing their uniform coats when not employed on the public service, and to send them to the magistrate. Reg. XX. 1817, sect. 30, cl. 3.

or sepoy wearing their uniform while on leave of absence.

2378. A general order of a magistrate forbidding people to carry arms is illegal: and individuals should not be deprived of their weapons except in cases where there is reasonable ground to apprehend danger of a breach of the peace from their being carried about. N. A. R. vol. 3, page 196.

Magistrate cannot forbid the wearing of arms, unless there is fear of a breach of the

2379. No person is to wear, or to be accessory to the wearing by any other person of any chuprass or badge intended to resemble any chuprass or badge worn by servants of the government; and every person violating this rule is to be punishable by fine and imprisonment, on conviction before a magistrate as for a misdemeanor. Act XVIII. 1835, sect. 2.

Punishment of persons wearing badges resembling government badges.

Punishment of employer. 2380. Every chuprass or badge worn by any person, not being a servant of the government, is to bear the name of the party by whom the wearer is employed; and whoever wears a chuprass or badge, or is accessory to the wearing of such chuprass or badge, otherwise than in conformity to this rule, is to be punishable by fine and imprisonment, on conviction before a magistrate, as for a misdemeanor. Act XVIII. 1835, sect. 3.

SECTION XII.

OF PROHIBITED BOATS.

Darogahs are to prohibit 2381. The darogahs are to seize all boats built, used, or transferred, in opposition to the rules contained in this section, and to apprehend and send to the magistrate the artificers employed in repairing or building such boats, and to report to him the name of the proprietor of the village in which they have been built or repaired. All persons are prohibited building or making use of boats of the following denominations and dimensions, or of boats of any other denominations being of the same dimensions, without previously obtaining from the magistrate the written authority hereafter directed :

Description of prohibited boats.

	In length covids.	In breadth covids.
Luckhas,.....	40 to 90	2½ to 4
Jelkas,.....	30 to 70	3½ to 5
Paunsways of Chandpore carrying more than thirty oars.		

Beng. Reg. XXII. 1793, sect. 20, cl. 1.

are to seize and confiscate such boats. 2382. The magistrates are to seize and confiscate all boats of the foregoing descriptions, which are built, used, or transferred within the limits of their respective jurisdictions without written authority from them for that purpose. *Beng. Reg. XXII. 1793, sect. 20, cl. 2.*

Villages in which such boats are built or repaired to be forfeited to government. 2383. Any zumeendar or other landholder allowing any boat of either of the descriptions above specified to be built or repaired within the limits of his zumeendaree, unless a writing is produced to him under the seal and signature of the magistrate, authorizing the building or using of such boats, is to forfeit to government the village in which such boat is proved to have been so built or repaired. *Beng. Reg. XXII. 1793, sect. 20, cl. 3.*

Punishment of artificers employed in building or repairing such boats. 2384. All carpenters, blacksmiths, or other artificers, are prohibited engaging for or being employed in the building or repairing of boats of such descriptions (unless the person offering to employ them produces a writing under the seal and signature of the magistrate authorizing the building or using of such boat) under pain of imprisonment for any period not longer than one month, or suffering corporal punishment not exceeding 20 stripes. The magistrates are empowered to cause artificers, who are proved to have offended against

this prohibition, to be punished in the manner and under the limitations directed according to the circumstances of the case. *Beng. Reg. XXII. 1793, sect. 20, cl. 4.*

2385. The magistrates are empowered to authorize any person to build or use boats of the dimensions or descriptions above prohibited, for the purposes of trade, or of conveying themselves from place to place by water, or for recreation; but such authority is to be given in writing under his official seal and signature, and is constantly to remain with the person to whom the building of the boat is committed whilst the boat is building, or on board of the boat in charge of some person after it is built; otherwise the boat is to be liable to seizure and confiscation notwithstanding such writing, in the same manner as if the boat had been built and used without such authority. The magistrates are to be careful not to grant licenses to build or use boats of the above denominations or dimensions, excepting to persons who they are satisfied will not allow them to be employed for any improper purposes. All persons desirous of building or using boats of the prohibited dimensions and descriptions, or to sell or transfer them, are to apply to the magistrate for a written authority for that purpose. The magistrates are to cause this section to be subjoined to all the written authorities which they grant for the building or using the boats in question, and the sanction for the sale or transfer of such boats is to be endorsed on the original authority for building or using them. *Beng. Reg. XXII. 1793, sect. 20, cl. 5.*

Magistrates may grant licenses for building such boats, under certain restrictions; and this section is to be appended to such licenses.

SECTION XIII.

OF TREASURE TROVE.

2386. Whenever any hidden treasure, consisting of gold or silver coin, or bullion, or of precious stones, or other valuable property may be found buried in the earth, or otherwise concealed within any part of the territory subject to this presidency; and, after due notification, the owner thereof may not be discoverable; such hidden treasure shall become the property of the person or persons who may have found the same, provided it shall not exceed in amount or value, the sum of one lakh of sicca rupees; and provided the finder or finders shall have conformed to the rules prescribed in this regulation. *Reg. V. 1817, sect. 2.*

Hidden under what circumstances and conditions to become the property of the finder.

2387. Whenever any person may find hidden treasure, of the description stated in the foregoing section, he shall give immediate notice thereof to the judge of the zillah or city in which the treasure may have been found; and shall at the time deposit the treasure in the zillah or city court, with an exact inventory thereof. *Reg. V. 1817, sect. 3.*

The finder how to proceed on the discovery of hidden treasure.

2388. The zillah or city judge receiving a deposit as above directed, shall return a receipt for the treasure deposited, after causing the same to be carefully compared with the inventory; and shall issue a public notification in the current languages of the country, to be published and affixed in his own cutcherry, and in the cutcherry of the collector of the district, requiring all persons who may have any claim of right to the treasure in deposit, to attend in person, or by vakeel, and prove their title thereto, within six months from the date of the notice. *Reg. V. 1817, sect. 4.*

Duty of the judges in such cases.

Notification to be issued, and period allowed to claimants to bring forward their

Collectors to bring forward any claim of right which government may appear to possess to such treasure.

Summary inquiry to be instituted by the judges of zillah and city courts.

How judgment to be awarded by the judge.

What judgment to be passed by the judge, in cases in which no claim be preferred

duals, and the amount may not exceed one lakh

be judge in cases in which the amount of treasure shall exceed one lakh of sicca rupees, and no claim of right thereto be established.

considered to have forfeited all right and title to the treasure and compensation.

Concealment of treasure not punishable by magistrate.

2389. It is the duty of the collectors to bring forward and to support, in conformity with the foregoing provision, any claim of right which government may appear to possess to such treasure. In the event of any claim of right being preferred either on the part of individuals or of government, pursuant to the prescribed notification, the judge shall institute a summary inquiry into the claim preferred; and if the title of government or other person so claiming the treasure of deposit or any part thereof, be clearly established, he shall adjudge the same accordingly; subject to reimbursement of all expense incurred by the finder of the treasure, as well as to such compensation for the discovery of it as may, in each case, appear just and reasonable. Reg. V. 1817, sect. 5.

2390. If no claim of right be preferred either by government or by an individuals within the period limited by the notification directed in section 4 of this regulation, or if the claim or claims so preferred shall not on a summary inquiry appear to be well founded; and the amount or value of the hidden treasure found at the same time, or in the same place, shall not exceed one lakh of sicca rupees; the zillah or city judge shall adjudge the same to the person or persons who may have discovered the treasure, and deposited it in the zillah or city court, as required by section 2; subject only to the actual expense which may have been incurred in adopting the measures prescribed by this regulation. Reg. V. 1817, sect. 6.

2391. If the amount or value of any hidden treasure found at the same time, or in the same place, shall exceed one lakh of sicca rupees, and no claim of right thereto be established, judgment shall be given, according to the preceding section, in favor of the person or persons who may have discovered and deposited the treasure, to the amount of one lakh of sicca rupees; and the excess above that sum shall be declared at the disposal of government. Reg. V. 1817, sect. 7.

2392. If any person discovering hidden treasure of the description specified in section 2 of this regulation, shall not, within one month after finding the same, give notice to the judge of the zillah or city court, in conformity with section 4, and make the deposit thereby required, he shall be considered to have forfeited all right and title to the treasure; as well as all claim to a reimbursement of expense, compensation, or reward, under the provisions of this regulation; and the treasure so clandestinely withheld from public investigation shall, on a summary suit by any subsequent claimant of right, and proof of a just title thereto, be adjudged to the legal owner with interest and costs; or if no private claim be established, shall, on the application of the vakeel of government, be liable to confiscation to government. Reg. V. 1817, sect. 8.

2393. The concealment of hidden treasure is not a criminal offence punishable by a magistrate. It involves only the forfeiture abovementioned, which is to be awarded by the civil courts. Reports *W. P.* 1852, page 521.

CHAPTER IV. OF LANDHOLDERS.

SECTION I. OF THEIR RESPONSIBILITY.

2394. Landholders and farmers of land are not responsible for robberies committed in their respective estates or farms, unless it is proved that they connived at the robbery; received any part of the property stolen or plundered; harboured the offenders; aided, or refused to give effectual assistance to prevent their escape; or omitted to afford every assistance in their power to the officers of government for their apprehension; in either of which cases they are subject to be prosecuted personally for the crime or offence before the sessions court, and if convicted their lands and effects are liable to be sold at the discretion of government to make good the value of the property stolen or plundered to the owner. *Beng. Reg. XXII. 1732, sect. 3.*

**Lower Pro-
vinces**

connivance.

2395. The landholders and village farmers are bound to, and responsible for, the preservation of the peace within the limits of their respective estates and farms. *Ben. Reg. XVII. 1795, sect. 2. Ced. Prov. Reg. XXXV. 1803, sect. 2. Western Prov. Reg. XIV. 1807, sect. 4.*

**Western
Provinces.**

Police subject to landholders, who are responsible for the preservation of the peace.

2396. The engagements entered into by the village zumeendars and farmers [in Benares] bound them to be responsible, subordinately to the aumil(a), for the maintenance of the peace, and for apprehending all disturbers thereof in and throughout their respective estates and farms; not to harbour thieves or robbers, but to secure their persons and deliver them up for trial; as well as to recover, or in failure thereof to be answerable for and to make good the value of, all property robbed or stolen within their respective limits;—and to send in for trial, accompanied by an attested report of the circumstances of the case, all parties concerned in broils, affrays, murders, or other breaches of the peace. *Ben. Reg. II. 1795, sect. 14, cls. 8 and 9.*

Police duties for which the village zumeendars and farmers in Benares bound themselves to be responsible.

2397. Landholders and farmers of land are considered responsible for robberies or thefts committed in their respective limits, estates, or farms; it being understood,(b)

How far landholders are responsible for thefts and robberies.

(a) The talsildaree (or aumildaree) system of police established by the above and other regulations in Benares, and the ceded and conquered provinces, was declared to have been found inefficient for the purposes intended by it, and was consequently repealed by Reg. XIV. 1807; and all mention of the talseeldars, their duties and responsibilities, has accordingly been struck out of the provisions quoted in succeeding paragraphs.

(b) The preamble to Reg. XVII. 1795, thus explains the causes of this provision;—"But the parties, thus made responsible, having represented that robberies and thefts committed on beparis and others were often perpetrated in consequence of their stopping and remaining during the night, with their cattle and goods, in the open fields or woods, instead of putting up in the villages, and giving notice of their arrival so as to admit of their security being duly attended to, it was provided by a general notification issued by the resident on the 29th January 1789, that no person should be entitled to restitution or indemnification by the aumils, landholders, or farmers, for losses by theft or robbery committed at night in the

however, that for night robberies in the open roads or woods, the landholders, or farmers are not to be held responsible, unless it is proved that they had such knowledge of the circumstances, as might reasonably have been expected to enable them to have prevented the theft or robbery; but that for thefts or robberies in inhabited places they are to be considered as liable to be made responsible, whether notice of the arrival of the owners of the property has been given to them or not, if under the circumstances of the case the magistrate be of opinion, that the theft or robbery was committed with their connivance, or that the perpetration of it was ascribable to their want of care or vigilance. *Ben. Reg. XVII. 1795, sect. 3. Ced. Prov. Reg. XXXV. 1803, sect. 3, cl. 1.* These rules are declared to be still in force throughout *Ben. and Ced. and Conq. Prov.* by *Reg. XIV. 1807, sect. 19, cl. 1.*

and for the value of stolen property brought into their estates.

2398. The landholders and farmers are further responsible for the value of any stolen or plundered property, proved to have been brought into their estates or farms with their knowledge or connivance, and which they have not caused to be delivered up, or respecting which they have not given timely information to the local police officer or to the magistrate. *Ben. and Ced. and Conq. Prov. Reg. XIV. 1807, sect. 19, cl. 2.*

Claims for the value of stolen property to be tried in the civil court.

2399. All claims upon the landholders and farmers for the value of stolen or plundered property, under the above rules, are to be instituted, tried, and decided in the civil courts, subject to the general rules of appeal. *Ben. and Ced. and Conq. Prov. Reg. VIII. 1797, sect. 2; and Reg. XIV. 1807, sect. 19, cl. 3.*

Landholders required to prevent affrays, and other the to ap-

2400. The landholders and farmers of land, who by the above provisions are entrusted with the police of their respective estates and farms, are required, with the assistance of their paiks, chokeedars, pasbans, and other descriptions of village watchmen, to give at all times their utmost care and vigilance to prevent affrays, assaults, and all other acts of violence and breaches of the peace, within their respective estates and farms; as well as to apprehend, and deliver over to the police officers, any persons who are found in the act of committing a breach of the peace, or whom the village watchmen are required to apprehend by [sect. 21, *Reg. XX. 1817*]. *Ben. Reg. II. 1797, sect. 2. Ced. Prov. Reg. XXXV. 1803, sect. 3, cl. 2.*

Landholders liable to fine. of wilful neglect in such cases liable to forfeiture of land, or fine.

2401. Any landholder or farmer of land, who is convicted of wilful neglect in the instance above referred to, and particularly of neglect to afford his ready and utmost assistance in apprehending persons within his estate or farm who have committed, or are charged with having committed a breach of the peace, is liable to the forfeiture of his estate

open fields or woods, and that restitution or indemnification should be claimable only in cases in which the owners of the property had put up at some town or village, and given notice of their arrival. But it having been subsequently considered, that it was the duty of the aumils, and the landholders and farmers, to have information conveyed to them of the arrival of merchants and travellers within their respective limits, and to provide for their security and protection; and it having appeared improbable that travellers and merchants in general would be apprized of the requisition for their giving notice of their arrival at a town or village; it was deemed inconsistent with the principles of justice, that any omission in this respect on their part should be allowed to exempt the aumils, landholders, or farmers, from making good any losses they might sustain by theft or robbery. It accordingly became an established principle throughout the province, that for night robberies in the open roads or woods the tusseldars, landholders, and farmers, were not to be held responsible, unless," &c. as above.

or farm, or to such fine to government as is judged adequate to the circumstances of the case; and is to be proceeded against in the following manner. *Ben. Reg. II. 1797, sect. 3, cl. 1. Ced. Prov. Reg. XXXV. 1803, sect. 3, cl. 3.*

2402. Landholders are liable to fine by the magistrate, in cases of theft of property at night from within their villages, only when they wilfully neglect to apprehend and deliver over to the police officers any person whom the village watchmen are required to apprehend by [sect. 21, Reg. XX. 1817], or when they make any other default of the nature described in the above provision. Const. No. 422.

ers are liable to fine for theft of property at night.

2403. The charge of wilful neglect, in the instances aforesaid, is to be received and examined into by the magistrate in the mode prescribed by the regulations with respect to other charges of a criminal nature; and after hearing the defence of the party accused, with the evidence adduced by him in his behalf, if the magistrate is of opinion that the charge is not established, he is to pass judgment of acquittal, with damages^(a) to the party if the complaint appears to have been groundless and litigious. If the magistrate considers the charge established, he is to record his opinion to this effect, with the punishment he judges adequate to the case, whether a fine (the amount of which is to be specified), or a forfeiture of the offender's estate or farm (the annual jumma of which is to be in that case specified), and to transmit without delay a copy of his proceedings to the nizamat adawlut. *Ben. Reg. II. 1797, sect. 3, cl. 2. Ced. Prov. Reg. XXXV. 1803, sect. 3, cl. 4.*

How the magistrate is to proceed in such cases.

2404. These provisions may be applied to a case in which no charge has been preferred by a private prosecutor; the magistrate being competent to proceed against the zumeendar for such neglect, whatever may be the means by which he has acquired the information to criminate him. Const. No. 889.

Private prosecution is not in such

2405. The nizamat adawlut, on receipt of the magistrate's proceedings, are to pass such order thereupon as they think proper, on due consideration of the evidence and all the circumstances of the case; and in all instances wherein they order a fine to government their judgment is to be considered final, and immediately carried into execution by the magistrate, in the same manner as other fines are levied under the existing regulations. But in case the nizamat adawlut adjudges a forfeiture of the offender's land or lease, they are, previous to ordering such judgment to be carried into execution, to transmit their proceedings with those of the magistrate to government, who are finally to determine whether the judgment of forfeiture is to be put in force, or commuted to a fine, or otherwise; and who, whenever the land or lease of the offender is ordered to be forfeited to government are at the same time to cause the necessary instructions for the future disposal of the land to be conveyed to the collector through the board of revenue. *Ben. Reg. II. 1797, sect. 3, cl. 3. Ced. Prov. Reg. XXXV. 1803, sect. 3, cl. 5.*

How the nizamat adawlut are to proceed on receipt of the magistrate's proceedings cases.

2406. The above provisions extend to landholders or farmers of land, who are convicted of having themselves been concerned, directly or indirectly, in any theft or robbery

The same rules

(a) These damages must mean reimbursement of costs, under the provisions of Reg. XIV. 1797, and Reg. VII. 1803. See paras. 1584 et seq.

at, or aiding
and abetting in any
theft or robbery.

committed within their respective estates or farms, or of having been aiding and abetting therein, or privy to the same. Such landholders and farmers are liable to be proceeded against in the manner prescribed in the foregoing clauses, subject to the penalty prescribed therein. *Ced. and Cong. Prov. Reg. VIII. 1805, sect. 14, cl. 8.*

The same rules
in
the public revenue.

2407. The above provisions, extended to the conquered provinces and Bundelcund by Reg. IX. 1804, are declared to be still in force, and are also to be considered equally applicable to all officers of government, intrusted with or employed in the collection of the public revenue; or the rents of estates held khas, or under attachments; it being the duty of every public officer to render any assistance in his power for the support of the police and the prevention of crimes, or the apprehension of persons by whom they are committed; especially when called upon to aid the established officers of police. *Ben. and. Ced. and Cong. Prov. Reg. XIV. 1807, sects. 20 and 21.*

SECTION II.

OF INFORMATION REQUIRED FROM LANDHOLDERS AND OTHER PERSONS; AND OF CONNIVANCE IN OFFENCES.

Information to
be given regarding
the resort to their
estates of dacoits
and other robbers,

2408. All zumeendars, talookdars, and other proprietors of land, whether malgoozaree or lakhiraj; all sudder farmers and under renters of land of every description; all dependant talookdars; all naibs and other local agents; all native officers employed in the collection of the revenues and rents of lands on the part of government, or of the court of wards; are especially accountable for the early and punctual communication to the magistrates and police darogahs, either publicly or secretly, as the informants judge proper, of all intelligence which they obtain respecting the resort to any place, within the limits of the estate or farm held or managed by them, of any person or persons of the different classes of people ordinarily known by the appellation of dacoits, kozaks, thugs, or budhucks, or of any other description of robbers. *Reg. VI. 1810, sect. 2.*

and penalty for neg-
lect in such cases,
with mode of pro-
cedure to be adopt-
ed by magistrate,

to

2409. If a magistrate has grounds to believe, that any person of the descriptions above specified has neglected to give due information to the magistrate, or the police darogah, of the resort of any robber to any place within the limits of the estate or farm held or managed by such person, the magistrate is to call upon him to answer to the charge; and if it appears, upon a full and impartial inquiry, that the person accused has been actually guilty of the neglect ascribed to him, the magistrate is to sentence the offender to pay such a fine to government, and to suffer imprisonment for such a period of time, as he deems proportioned to the offence, not exceeding, however, the limitation prescribed by sect. 19, Reg. IX. 1807, viz. that imprisonment for 6 months, and a fine of 200 rupees, commutable, if not paid, to imprisonment for a further period not exceeding 6 months longer.* *Reg. VI. 1810, sect. 3.*

2410. All zumeendars, talookdars, and other proprietors of lands, whether malgooza-ree or lakhiraj; all sudder farmers and under renters of land of every description; all dependant talookdars; all naibs and other local agents; all native officers employed in the collection of the revenue and rents of land on the part of government, or of the court of wards; are hereby declared accountable for the early communication to the magistrate, either secretly or publicly, of all information which they obtain respecting the residence of any notorious receiver or vender of stolen property within the limits of the estate or farm held or managed by them; and any landholder or other description of persons above noticed, to whom such responsibility is declared to attach, who neglects to give the information hereby required to the police darogah, or to the magistrate, is on proof of such neglect, after a similar inquiry to that directed by the above provision, (a) to be sentenced by the magistrate to pay a fine, or to suffer imprisonment not exceeding the limitation therein specified. *Beng. Reg. I. 1811, sect. 10; extended to Ced. and Cong. Prov. and to Ben. by sect. 2, Reg. XV. 1812.*

of the residence of any receiver or vender of stolen property within their estates;

and penalty of neglect;

2411. All zumeendars, talookdars, and other proprietors of lands, whether malgooza-ree or lakhiraj; all sudder farmers and under renters of land of every description; all dependant talookdars; all naibs and other local agents; all native officers employed in the collection of the revenue and rents of lands on the part of government, or of the court of wards; are declared especially accountable for the early and punctual communication to the magistrates or police darogahs of all information which they obtain respecting the commission of robberies, and likewise regarding the offence of breaking into houses, tents, or boats, or other place of habitation, perpetrated within the limits of the estate or farm held or managed by them; and any landholder or other description of persons above noticed, to whom such responsibility is declared to attach, who neglects to give the information hereby required to the police darogah, or to the magistrate, is on proof of such neglect, after an enquiry similar to that directed by sect. 3, Reg. VI. 1810,* to be sentenced by the magistrate to pay a fine, or to suffer imprisonment not exceeding the limitation therein specified. *Reg. III. 1812, sect. 4, cl. 2.*

of the commission of robberies perpetrated within their estates,

and penalty of neglect;

* See note to para. 2410.

2412. All zumeendars, talookdars, and other proprietors of land whether malgooza-ree or lakhiraj; all sudder farmers and under renters of land of every description; all dependant talookdars; all naibs, and other local agents; all native officers employed in the collection of the revenue and rents of lands on the part of government, or of the court of wards; are declared especially accountable for the early and punctual communication to the magistrates, or police darogahs, of all information which they obtain respecting the commission of murders, and likewise regarding the offences of arson and theft, perpetrated within the limits of the estate or farm held or managed by them: and any landholder or other description of persons above noticed, to whom such responsibility is declared to attach, who neglects to give the information hereby required to the police darogah or to the magistrate, is on proof of such neglect, after an enquiry similar to that directed by sect. 3, Reg. VI.

of the commission of murders, arson, and thefts, perpetrated within their

and penalty of neglect.

(a) The section specified in the original is sect. 13, Reg. IX. 1808; but, as that regulation has been repealed, and as it is exactly the same, in such respects, as sect. 3, Reg. VI. 1810, I have quoted the latter for the sake of convenience.

* See note to para. 2410.

1810,* to be sentenced by the magistrate to pay a fine, or to suffer imprisonment not exceeding the limitation therein specified. Reg. VIII. 1814, sect. 2.

2413. A magistrate cannot sentence a person under the above provision to both fine and imprisonment, but only to a fine not exceeding 200 rupees, commutable if not paid to imprisonment not exceeding 6 months. Const. No. 485.

The principal persons in the villages are required to give information of the resort or passage of any considerable body of strangers;

penalty in cases of neglect:

* See note to para. 2410.

2414. The principal persons residing in villages, whether landholders or farmers, or other local managers, or munduls, putwarees, or other heads of villages, and also chokeedars and village guards of every description, are responsible for the early and punctual communication to the officers of the nearest police station of the resort to or passage through their villages of any considerable body of strangers, or of the assemblage of such bodies within the limits of their villages, together with any particulars which they are able to collect as to the alleged object of their assemblage or journey, or any suspicion which arises as to their real character and intentions. Any landholder or farmer or other local manager, or mundul, putwaree, or other heads of villages, who wilfully neglects or delays to give the information above required, is on proof of such neglect, after an enquiry similar to that directed by sect. 3, Reg. VI. 1810,* to be sentenced to pay a fine or to suffer imprisonment not exceeding the limitation therein specified; and any chokeedar, or other village guard, who is guilty of such neglect, is liable to the punishment which the magistrate is authorized to inflict under the provisions of sect. 6, Reg. III. 1812. [See note to para. 2177.] Reg. III. 1821, sect. 7, cl. 5.

deaths;

penalty of neglect.

2415. The principal persons residing in villages, whether landholders or farmers or other local managers, or munduls, putwarees, or other heads of villages, are responsible for the early and punctual communication to the officers of the nearest police station of all unnatural deaths, or deaths attended with suspicious circumstances, which come to their knowledge: and any landholder, farmer, manager, or other principal inhabitant of a village, who is convicted of wilfully neglecting or delaying to furnish the information above required, is liable to be fined by the magistrate in any sum not exceeding 200 rupees, and in default of payment to be confined for any period of imprisonment not exceeding 6 months. Reg. XX. 1817, sect. 14, cl. 1.

It is not sufficient that the information is received from the choke-

2416. The zumeendars are obliged to give, under certain prescribed penalties, the required information respecting dacoities, murders, and other crimes committed within the limits of their estates, which come to their knowledge; and it is not sufficient that the same information is received from the chokeedars. The mode in which the information is to be communicated appears to be left to the discretion of the zumeendars: in general it should be supplied in writing; but if the zumeendar has any secret information to give, he may wait on the magistrate personally for that purpose; and it is optional with him to send a servant to the magistrate or to the darogah, as he sees fit. Const. No. 1281.

No person is excluded from the exercise of such duties by reason of place of birth or descent.

2417. No person whatever, being the owner, holder, or farmer of any property in land, or in any emoluments issuing out of land, in any part of the territories under the government of the East India Company, whether in perpetuity or for a term, or being a local agent or manager of any such property, is by reason of his place of birth, or by reason

of his descent, exempt from any public charge or assessment, or from any duty connected with the police, or with the salt and opium revenue, or from any duty whatsoever of a public nature, to which he would otherwise be subject, as the owner or holder of such property or as a local agent or manager thereof. Act II. 1853, sect. 1.

2418. For the non-payment of any such public charge or assessment, or for the breach of any such duty as aforesaid, or for any neglect or misconduct in the discharge thereof, every person, whatever may have been his place of birth, or his descent, shall be subject to the same laws, regulations, and procedure, and to the same jurisdictions, as if he were a native, of the said territories. Act II. 1853, sect. 2.

All persons
to the
dure a

2419. In the case of a minor whose estate is not under the court of wards, the executor or guardian must, during the minority, stand in the place of the minor, and be subject to all the rules of suit and defence to which the minor himself would be subject were he not a minor. Const. No. 335.

Guardians of mi-
nors, not under
the court of wards,
are responsible ;

2420. The magistrate is to take particular care to see, that in the government khas mahals the same police rules are obeyed by the tulseeldars and village officers, as are in force according to the law in private zumeendaries. In case of this not being done, he is immediately to report the instances of neglect to the superintendent of police, that measures may be taken to have the same remedied ; but the transmission of such report is not to cause the magistrate to postpone the issue of any orders, which he is authorized by law to pass. C. O. Sup. Pol. L. P. No. 4 of 1840.

and the same rules
are to be observed
in the government
khas mahals.

2421. If the magistrate has grounds to suspect that any zumeendar, talookdar, or other proprietor of land, whether malgoozaree or lakhiraj ; any sudder farmer or under renter of land of any description ; any dependant talookdar ; any naib or other local agent ; or any native officer employed in the collection of the revenues or rents of land on the part of government, or of the court of wards ; has afforded any actual assistance in harbouring a dacoit, kozak, thug, budhuck, or other robber, that is, if such person is suspected of having afforded to the said offender lodging, money, grain, or other supplies ; or that he has committed any other overt act, tending to aid the offender in his depredations upon the community, or to evade the pursuit of justice ; or that he has received any present or nuzzur, either in money or goods, from the said offender ; the magistrate is to call upon the person suspected of having so offended for his reply ; and if it appears upon a full and impartial inquiry, that he has been actually guilty of the serious offence ascribed to him, the magistrate, in addition to the punishment mentioned in the preceding section [i. e., imprisonment for 6 months, and a fine of 200 rupees, commutable if not paid to imprisonment for a further period not exceeding 6 months longer], is to adjudge the estate or farm held by him (supposing him to be a sudder zumeendar, talookdar, or farmer) forfeited to government. Provided, however, that, previously to carrying the judgment of forfeiture into execution, the magistrate is to submit his proceedings on the subject to the nizamat adawlut, who are to confirm or annul the judgment so passed, according as they are of opinion that the charge has been duly established or otherwise. Provided moreover that, in the event of their

Penalties to
which landholders
are liable for har-
bouring dacoits or

the judgment, the nizamat adawlut are to report the case to government. (a)
1810, sect. 4.

Proprietors of
come
above
of per-

2422. Proprietors of lakhiraj lands and durputnee talookdars are exempt from the penalties prescribed by the above section, the provisions of which apply exclusively to a sudder zumeendar, talookdar, or farmer. They are liable to punishment under the succeeding section. Const. No. 63.

Penalties to
which other per-
sons, not landhold-
ers, are liable for
offence;

If offender is
an officer of go-
vernment.

2423. Should the person convicted of the offence mentioned in the preceding section not be a proprietor or sudder farmer of land, the magistrate is to sentence him, in addition to the fine and imprisonment noticed therein, to such further fine and imprisonment as he deems proportioned to his offence; but previously to carrying such further judgment into effect, the magistrate is to submit his proceedings to the nizamat adawlut, who are finally to confirm, amend, or rescind the decision, as appears to them to be just and proper. Should the person so offending be also an officer of government, the nizamat adawlut is at the same time to order him to be dismissed from his office, and is further to report to government, whether it appears expedient that the offender should be declared incapable of again serving government in any public capacity. Reg. VI. 1810, sect. 5.

Example of pun-
ishment of land-
holder conniving at
affray.

2424. A landed proprietor was convicted of having had previous knowledge of, and conniving at, an affray attended with wounding; and was sentenced to a fine of 500 rupees, or in default imprisonment without labor for 3 years. N. A. R. vol. 5, page 41.

SECTION III.

OF THEIR DUTIES IN THE APPREHENSION OF ABSCONDED OFFENDERS.

Registers of es-
caped convicts and
persons absconded
to be kept up by
the magistrate;

2425. The magistrates are to keep up and regularly revise, according to the forms given in Nos. 1 and 3 (Nos. 1 and 2 of appendix B), a register of convicts who have broken jail, or have otherwise effected their escape, and a register of persons charged with or suspected of the commission of specific crimes of a heinous nature, who have eluded the pursuit of justice: copies of these registers are to be forwarded half-yearly (b) to the superintendent of police. Reg. III. 1812, sect. 9, cls. 1. and 2.

and lists to be pre-
pared therefrom
half-yearly, or of-
tener, and trans-
mitted to the land-

2426. At the expiration of every six months, or oftener, when circumstances appear to require it, the magistrates are to cause lists to be prepared from these registers of all persons therein named, who have not been apprehended; and are to transmit copies of

(a) It was held by the sudder court, in the trial of a zumeendar (Juggesir Bhattacharj) for secreting in his house a notorious dacoit, that a conviction of the latter must be had before any person could be convicted of neglecting to give due information regarding him, or of harbouring him. I cannot find the trial among the printed reports; and the soundness of the dictum appears doubtful, for the offence of the harbourer depends more on the known character of the dacoit than on his conviction. These are two cases reported, one in N. A. R. vol. 5, page 158, and the other in Reports L. P. 1854, part 1, page 272, in which persons have been charged with harbouring dacoits; but in the one case the proceedings were incomplete, and in the other the evidence adduced was insufficient for conviction.

(b) It appears from C. O. Sup. Pol. L. P. No. 6 of 1845, that these are required only annually.

such lists to the principal landholders, farmers, and managers of land, together with warrants for the apprehension of the persons therein named, agreeably to the forms Nos. 4 and 6 (Nos. 30 and 31 of appendix A). Transcripts of the lists thus prepared are to be at the same time transmitted by the magistrates under their official seal and signature to the police darogahs for their information. Reg. III. 1812, sect. 9, cl. 3. sons named therein;

2427. The magistrates are to be careful to obtain from the landholders, farmers, and managers of land, or from their representatives, to whom such lists and warrants are delivered, written acknowledgments of the receipt of them. Reg. III. 1812, sect. 9, cl. 4. and written acknowledgment of their receipt required from the

2428. It is only in the case of *crimes of a heinous nature*, that a magistrate can address a warrant to a landholder for the apprehension of an offender under this law. A warrant which did not contain a specification of the crime, with which the absconded person was charged, was held to be insufficient and invalid, and one therefore which the landholder could not legally put in force. Reports *L. P.* 1853, part 1, page 577. Such warrants can be issued only in heinous offences; and must contain specification of crime charged.

2429. All zumeendars, talookdars, and other proprietors of land, whether malgoozaree or lakhiraj; all sudder farmers and under-renters of land of every description; all dependant talookdars; all naibs and other local agents; all native officers employed in the collection of the revenues and rents of land on the part of government, or of the court of wards; to whom the lists and warrants have been delivered, are authorized either to cause the immediate apprehension of any of the persons named in either of the lists, who are found within the limits of the estates held or managed by them; or to apply to the nearest police officer for any aid which may be required in the execution of that duty: or simply to communicate to such officer such information as has been obtained respecting the place, to which the persons in question resort, or in which they are concealed. Reg. III. 1812, sect. 9, cl. 5. Landholders, &c. to whom such lists and warrants are sent, may apprehend the persons named therein.

2430. It was held that a requisition by a magistrate from the zumeendars of villages, within a certain distance from that where an affray attended with homicide occurred, of certificates that the absconded offenders implicated in the affray were not within the limits of their estates, was not warranted by the above provisions.(a) Const. No. 1352. But landholders cannot be called up to furnish limits of their estates.

2431. Persons who are apprehended under the provisions of this regulation are to be delivered as speedily as possible into the charge of the nearest police officer for the purpose of being forwarded under safe custody to the magistrate; and an acknowledgment is uniformly to be given by such police officer, specifying the names of the prisoners, and the date on which they were delivered into his charge. Reg. III. 1812, sect. 9, cl. 6. Such persons when apprehended are to be delivered into the charge of the nearest police officer.

2432. The several zumeendars, farmers, and local agents, to whom warrants and lists of public offenders have been furnished under these provisions, are required to transmit to the magistrates, on the 30th June and 31st December in each succeeding year, returns according to the form No. 7 (No. 3 of appendix B) of all offenders who have been appre-

(a) But where a process is issued against a particular person, who is absent or has absconded, the proprietor, manager, or head person of the village, in which he is said to reside, may be called upon to furnish a written certificate of his absence, engaging therein either to cause his attendance on his return to the village or to give information at the thana of his arrival. See paras : 1570 and 1571.

handed by them, or by means of information given by them to any police officer the preceding six months; counterparts of which returns are at the same time to be transmitted by the several zumeendars, farmers, or local agents, by means of the public dāk, to the office of the superintendent of police. Reg. III. 1812, sect. 9, cl. 7.

2433. In like manner the darogahs are to transmit, at the same periods, returns of all persons named in the lists with which they have been furnished, who have been apprehended by them during the preceding six months, accompanied by any explanation which they wish to offer in the event of no persons having been apprehended; copies of the prescribed returns and explanations are at the same time to be forwarded by the police darogahs by the public dāk to the superintendent of police, and such returns are to be invariably made, whether any persons have been apprehended or otherwise, and are to be despatched on or before the 15th of January and July. Reg. III. 1812, sect. 9, cl. 8.

Magistrates to
will be held guiltless of any consequences ensuing from resistance to the execution of such warrants.

2434. Magistrates are to cause it to be explained to all persons to whom warrants are granted for the apprehension of persons under the above provisions, that if in the legal execution of such warrants, either by themselves or by any person or persons acting under their authority, any resistance is made by the party named in the warrant, or by any other person (the said warrant being shown to the party so resisting) such zumeendar, farmer, or local agent, or other person acting under their authority, by whom the warrant is executed, is to be held guiltless with regard to any consequences, which ensue from such resistance to the execution thereof. Reg. III. 1812, sect. 10, cl. 1.

Resistance to such process how to be punished.

2435. Any resistance by any person whatever of any warrant or process of the court issued under this regulation, is to be punishable in the same manner, as is prescribed by the existing regulations for resistance of process of the magistrates. Reg. III. 1812, sect. 10,

Zumeendars, &c. to be informed that they will not be required to prosecute or attend the courts in such cases.

2436. The magistrates are to cause it to be carefully explained to the zumeendars, farmers, and their local agents, to whom warrants are granted under this regulation, that they will not be required either to become prosecutors, or to attend the court, or to adduce evidence, or otherwise be subjected to any personal inconvenience or expense on account of any charge or prosecution, which is depending or is instituted against any person legally apprehended by them under this regulation, or who are apprehended by means of any information which they furnish to any police officers. Reg. III. 1812, sect. 11, cl. 1.

Evidence as to persons so apprehended, pro- the offi- cers.

2437. In the event of any evidence being required by the magistrate in regard to the general character of any party apprehended by means of any zumeendar, farmer, or local agent, or in respect to any other point or matter which is not furnished by the proceedings previously held by the court, or by any other records of the magistrate's office, the magistrate is to cause such evidence to be procured by means of the regular police officers. Reg. III. 1812, sect. 11, cl. 2.

Penalties for neglect or misconduct of zumeendars, &c. in the performance of the duty herein prescribed.

2438. Whenever a magistrate has grounds to believe that any zumeendar, farmer, or manager of land, has been guilty of any neglect or misconduct in the discharge of the duty imposed on him by the above provisions, he is to call upon him to answer to the charge; and, if it appears upon a full and impartial inquiry, that the accused has been

actually guilty of such neglect or misconduct, the magistrate is to sentence him to pay such a fine to government and to suffer imprisonment for such a period as he deems proportioned to the offence, not exceeding the limitation prescribed by sect. 19. Reg. IX. 1807, viz. imprisonment for six months, and a fine of 200 rupees, commutable, if not paid, to imprisonment for a further period not exceeding six months longer. Reg. III. 1812, sect. 12.

2439. The magistrates are empowered to grant such lists and warrants as are described above to any individual with his consent not being a zumeendar, farmer, or local agent for the management of lands, or regular police officer of government; and the provisions of this regulation are to be held applicable to the legal execution of any warrant of the magistrate by any person so employed. Reg. III. 1812, sect. 13.

Magistrates may grant such lists and warrants to persons not being zumeendars, &c. with their own consent; and these rules are applicable to such

2440. If any zumeendar, farmer, local manager, or other person to whom a magistrate has issued a warrant or order, in pursuance of the above rules, or of any other regulation in force, for the apprehension of a person or persons proclaimed or charged with or suspected of a crime, applies to an officer of police for co-operation and support in the execution of such warrant or order; the police officer, to whom the application is made, is to afford every assistance in his power for the due enforcement of the process; and, if required to do so, is to receive charge of the prisoner from the zumeendar, farmer, local agent, or other person, and is to grant a written acknowledgment specifying the name of the prisoner and the date on which he was delivered into his charge; he is also without delay to forward the prisoner under safe custody to the magistrate. If the person named in the application made to the police officer is not apprehended, the particulars of the application and of the measures taken in consequence are to be recorded for the information of the magistrate in the thana diary. Reg. XX. 1817, sect. 26, cl. 13.

Police officers are to assist the zumeendars, &c. in carrying the above rules into effect.

SECTION IV.

OF TREATMENT OF LANDHOLDERS BY MAGISTRATES; AND MISCELLANEOUS RULES.

2441. It is of the greatest importance that the magistrate should acquire the assistance of the European and native landholders (and indeed of the people generally) in the district in the detection and suppression of crimes; and he should make the obtaining of this one of the principal objects of his attention. C. O. Sup. Pol. L. P. No. 13 of 1846.

Importance of acquitting landholders.

2442. A magistrate succeeded in obtaining the co-operation of the zumeendars, and almost every description of people, to an extraordinary degree, by assembling and explaining to the naibs and agents of the landholders the purport and intention of the regulations, the assistance and co-operation expected from them, and the consequences of any omission or neglect on their part either to assist the police officers, or to deliver up notorious dacoits,

Mode in which assisted co-

vagrants, or persons of bad or suspicious character supposed to subsist by depredations on public. C. O. No. 53 of vol. 1.

to be
them with such

2443. In pursuing the system pointed out in the above order, the magistrate is not to take ~~mochalkas~~ from the zumeendars, or munduls, or ryots; it is sufficient that the regulations prescribe the duties to be performed by such people, and the adequate penalties for the policy of government to invest the zumeendars with power to apprehend persons on the ground of their being known robbers or vagrants; but to restrict its agency to the communication to the magistrate and police officers of early information respecting the commission of public offences, and at the same time to withhold from them all positive power of interference in matters of that nature, in which experience has shown that they could not safely be trusted. It is of course to be understood that the zumeendars, like any other individuals, are competent to apprehend persons in the actual commission of public crimes. C. O. No. 80 of vol. 1.

Any individuals
may apprehend
persons in the ac-
tual commission
of crimes.

Mode in which zu-
meendars should be
treated by the ma-
gistrates.

2444. Much of the reluctance felt by proprietors and managers of estates to give their ready and active assistance in matters of police, is not unfrequently to be ascribed to an injudicious and intemperate use of the authority vested in the magistrates to enforce certain police duties from the zumeendars. The discharge of those duties by the proprietors and managers of estates, or their agents, is undoubtedly essential to an efficient police; but a harassing, vexatious, and indiscriminate interposition of the magistrate's authority, in cases of trifling importance, is not calculated to secure their useful co-operation. If the proprietors of estates are compelled to attend at the magistrate's cutcherry, to answer for every petty inattention or supposed irregularity in the discharge of the duties entrusted to them, they will naturally be led to avoid residing on their estates, and to thwart rather than forward the views of the magistrates. The powers vested in the magistrates are abundantly sufficient to enable them to visit with severity any frequent disregard or violent breach of the police duties intrusted to zumeendars; but their willing, and cordial, and really useful aid is to be obtained only by a temperate and conciliatory, though firm exercise of those powers; by a liberal consideration of trivial errors and defects; by an uniform acknowledgment of useful services, and by the willing distribution of praise and reward when merited. C. O. No. 241 of vol. 1.

Rules for the
procedure of ma-
gistrate on receiv-
ing report of a zu-
meendar's neglect
of police duties.

2445. On receiving a report of alleged neglect of police duties on the part of any landholder, the magistrate is not to require his personal attendance at the court, before calling upon him to furnish, within a week or ten days, a written explanation of the charge brought against him. Should the explanation be unsatisfactory, or should none be afforded within the time, the magistrate is to require him to appear on an appointed day, in person or by mokhtar, to answer the charge. On his obeying the summons he is to be careful to enter immediately upon the enquiry, avoiding all delay by summoning the witnesses in support of the charge to appear on the appointed day, and by directing the accused to produce at the same time any witnesses whose evidence he may desire to offer in his own defence. The offence being one of a bailable nature, the accused or his agent should not be placed in custody, when required to attend the investigation into the charges.

C. O. No. 52 of vol. 3. Where the magistrate did not follow this course, his orders were reversed by the court. Reports *L. P.* 1853, part 1, page 732.

2446. A zumeendar having exerted himself in securing the parties suspected of a murder, and in sending information to the police, the court considered the magistrate to have acted injudiciously in compelling his attendance as a witness, since his evidence under the circumstances of the case was superfluous. "Magistrates," observed one of the judges "often complain, and with justice, of the want of a disposition in the zumeendars to second their exertions; but nothing is so likely to slacken the zeal of that class of men, as the apprehension that they may have to give evidence as a necessary consequence of any successful effort on their part in aid of the police." *N. A. R.* vol. 5, page 9.

Example of injudicious summoning of a zumeendar to give evidence.

2447. Peons entrusted with perwanahs addressed to landholders or their officers, for assistance to be rendered to the police on emergencies, or for other purposes, are not to exact tulubana from the parties. C. O. No. 33 of vol. 3.

Landholders are not to pay peons' tulubana when addressed on police matters.

2448. Zumeendars, independent talookdars, and other actual proprietors of land, dependent talookdars, farmers of land holding farms immediately of government, and all persons farming lands of the above mentioned descriptions of landholders and farmers of land, and their respective officers, agents, servants, dependents, and ryots, are prohibited from taking cognizance of, or interfering in, matters or causes coming within the jurisdiction of the courts of civil judicature, or the sessions courts or the magistrates, under pain of being liable to the payment of such fine to government, and damages to the party injured as the court of judicature in which they are prosecuted for the act deems it proper to impose and award. *Beng. Reg.* VIII. 1793, sect. 66.

Zumeendars, are prohibited from taking cognizance of, or interfering in, matters coming

2449. Landholders and farmers of land are prohibited confining or inflicting corporal punishment on any under-farmer, ryot, or dependant talookdar, or putteedar, or their sureties, to enforce payment of arrears of rent or revenue. If any landholder or farmer offends against this prohibition, the person so punished or confined is at liberty either to prosecute the offender for assault or imprisonment in the criminal court, or to institute a suit against him in the civil court. *Beng. Reg.* XVII. 1793, sect. 28. *Ben. Reg.* XLV. 1795, sect. 26. *Ced. Prov. Reg.* XXVIII. 1803, sect. 26.

Landholders are prohibited from confining or inflicting corporal punishment on any under-tenants.

2450. Landholders, farmers, and other local agents, and indigo planters and other persons, are prohibited from using stocks, or any other instrument of restraint, for the purpose of confining ryots, or other individuals indebted to them on any account whatever; and darogahs of police are to report to the magistrates, for such orders and process as appears proper under the general regulations, all instances which come to their knowledge of a violation of this rule. *Reg.* XX. 1817, sect. 27, cl. 6.

Landholders, &c. are prohibited from using stocks.

2451. Landholders have the power of summoning, and, if necessary, of compelling, the attendance of their tenants for the adjustment of their rents, or for any other just purpose, or of measuring any land within their respective estates which are liable to measurement under the conditions upon which such land has been leased or held. For the just exercise of such rights and powers, the landholders are not required to make any previous applica-

Landholders may compel the attendance of any ryot,

but are answerable for the abuse or unjust exercise of this power.

tion to the courts of justice; and any person opposing them therein is liable, on proof in the dewanny adawlut, to full damages and all costs, besides being subject, for any breach of the peace, to prosecution and punishment in the criminal courts. But the landholders, their agents and representatives, are answerable for any abuse or unjust exercise of these powers; and, on proof thereof by the party aggrieved in the dewanny adawlut, are liable to full costs and damages, besides a fine to government if the case appears to deserve it. *Beng. Reg. VII. 1799, sect. 15, cl. 8. Ben. Reg. V. 1800, sect. 14, cl. 8. Ced. Prov. Reg. XXVIII. 1803, sect. 32, cl. 8.*

Explanation of the above rule; and how far the magistrate may interfere.

2452. The sudder court expressed their inability to define exactly and generally what degree of power it was intended by the use of the term "compulsion" in the above provisions to confer on the landholders in enforcing the attendance of their tenants. The magistrate was directed, in the event of a complaint being preferred to him of the abuse of that power, to decide from the evidence whether any unnecessary and unauthorized degree of severity had been exercised or not. Const. No. 382.

Landholders cannot be compelled to repair roads;

2453. There is no regulation which authorizes a magistrate to compel a zumeendar or other landholder to repair the public roads passing through his village or estate. Const. No. 1072.

or to provide police buildings;

2454. A magistrate is not authorized to call upon a zumeendar to provide a building for the residence of such police officers as are stationed upon his estate under sect. 8, Reg. XVII. 1817 [*i. e.* outposts]. Const. No. 1247.

nor be prohibited from establishing hâths in their estates;

2455. Zumeendars and other proprietors of land have a right to establish hâths or fairs on their own lands, and to hold them on any day that they think proper; and it is not competent to the magistrates to prohibit the establishment of a hâth or fair, or to fix the day on which it may be held, on the plea of its interfering with the right of a neighbouring hâth-holder, or on any other ground. C. O. No. 66 of vol. 2.

(magistrates are to interfere in such cases only to prevent a breach of the peace)

2456. The above order refers only to new disputes regarding hâths, with which the magistrate should not interfere unless it is necessary to prevent a breach of the peace; but it has been twice held that summary orders, fixing the days on which a hâth was to be held, passed before the promulgation of the above circular order, were to be considered in full force until set aside by a regular civil suit. Const. Nos. 639 and 937.

nor from levying choongee.

2457. Zumeendars cannot be prohibited from levying "choongee,"^(a) a cess sanctioned by established custom, within the precincts of their estates. Const. No. 973.

(a) In Sir H. M. Elliot's curious and interesting "Supplemental Glossary" this word is explained to be:—"Illegal abstraction of handfuls of market produce. It is frequently, however, given voluntarily as a sort of rent for the use of market conveniences, such as booths, sheds, &c.; and in this sense is equivalent to the *byat* of the Deccan and the English *board half-penny*."

CHAPTER V.

OF NATIVE MINISTERIAL OFFICERS.

SECTION I.

OF APPOINTMENT, REMOVAL, AND FUNCTIONS.

2458. The nizamut adawlut, the superintendent of police, and the session judge, may exercise, without reporting their proceedings for the sanction of government, the power of appointing, removing, and accepting the resignation of the principal ministerial native officers acting under them respectively, as well as all other native officers on their respective establishments, excepting the law officers.* Reg. VIII. 1809, sect. 3.

Of superior courts

who have the final power of dismissing and appointing their officers.

* regarding whom, see separate section.

2459. Whenever the head ministerial native officers of the above mentioned authorities are desirous of resigning their offices, they are required to receive and record such resignations in open court. Reg. V. 1804, sect. 5.

Resignations always to be received in open court.

2460. Whenever the authorities specified above see cause for the removal of any of their head native officers on the ground of misconduct, incapacity, or otherwise, they are to communicate to such officer the grounds upon which they consider him undeserving of continuance in his station, and to call upon him to state what he has to offer in his defence. Reg. V. 1804, sect. 6.

Ground of removal is to be specified in such cases.

2461. The civil and session judge is required to report to the sudder court, for their information, the removal or resignation of the serishtadar, peshkar, or nazir, attached to his court within ten days after the same has taken place. The names of the individuals nominated to such offices are also to be reported to the court in the form No. 24 of appendix C, within the same period after the nomination has occurred. C. O. No. 73 of vol. 3. *L. P.*

The removal or resignation of the head officers of the judge's court to be reported to nizamut adawlut.

2462. Whenever any of the ministerial officers attached to the court of the civil and session judge, receiving a salary of not less than ten rupees a month, is dismissed from the public service for misconduct, a report of the same is to be submitted to the sudder court, according to form No. 25 of appendix C, with a view to a register of their names being kept in conformity to the order of the Court of Directors. An extract from the register is to be forwarded to the judge annually, to enable him to guard against the admission of improper persons into the public offices; and these extracts are to be communicated to the several authorities of the district, so as to make the register of each department available to the heads of the other departments. C. O. Nos. 115 and 125 of vol. 3.

Session judge to report dismissal of officers in order to the formation of a register.

2463. The nizamut adawlut, the superintendent of police, and the session judge, are to transmit to the civil auditor a monthly report of any appointments or removals, which

Monthly report of appointments and removals to be

furnished to the civil auditor.

are sanctioned, under the authority vested in them by the above rules, either of the native officers on their own establishments, or of those on the establishments of the magistrates. Reg. V. 1804, sect. 21. Reg. VIII. 1809, sect. 11, cl. 2.

Character books to be kept of all amlah drawing ten rupees and upwards.

* See para. 2069.

2464. Judges are to keep up character books of their clerks, serishtadars, record-keepers, nazirs, mohurirs, and all ministerial officers drawing ten rupees a month and upwards, under the same rules as those prescribed for commissioners and magistrates by the Order, No. 244 A, January 23, 1855.* Entries therein are invariably to be made by the head of the office with his own hand. C. O. S. D. A., No. 775, April 30, 1855, *W. P.*

Of magistrates.

Superintendent of police has power to confirm the appointments and removals of all native officers receiving salary of 10 Rs. or upwards.

2465. The superintendents of police are empowered to confirm the appointment, removal, and resignation of the principal ministerial officers of the magistrates, as well as of the record-keepers, and the whole of the native officers on the establishments of the magistrates and subordinate courts receiving a salary of 10 rupees per mensem or upwards, within their respective divisions, on receiving from the magistrates the reports specified in the following clauses. Reg. VIII. 1809, sect. 5, cl. 1; and sect. 7, cl. 1. Reg. I. 1829, sect. 3, cl. 1. Act XXIV. 1837, sect. 4.

All such officers

of police.

appointments;

and persons so appointed may legally act before confirmation.

The nominating officer is to certify that the person nominated is not his private servant.

* v. paras. 2501 and 2502.

2466. The magistrates are to nominate all such officers, and are in consequence to be held responsible for selecting persons duly qualified. They are to report fully to the superintendent of police any information obtained by them respecting the past employments, character, and qualifications of the persons proposed by them to fill the vacant offices; and it is competent to the superintendent of police to confirm the appointment of the person so nominated, if he sees no objection thereto; or to call for any further information that appears requisite respecting the past employments, character, or qualifications of the person proposed; or, if the appointment of such person appears objectionable, to require the magistrate to nominate another person. No appointment is to be considered final, till so confirmed. But the magistrate is authorized to make temporary appointments of persons duly qualified, in cases of death, removal, suspension, or resignation, immediately reporting the same for the information of the superintendent of police. Reg. VIII. 1809, sect. 5, cl. 2; and sect. 7, cl. 2.

2467. Persons so appointed to officiate can legally act as officers of the court immediately on their nominations, before their appointments have been reported to the commissioner of circuit. Const. No. 618.

2468. In all nominations of native officers, the officer making such nomination is required to state explicitly, that the person so nominated is not disqualified under the provisions of this regulation [*i. e.* is not the private servant of such officer]*; and it is at all times the duty of the superintendent of police to see that these provisions are observed, as well as to report any wilful infringement of them to government. Reg. VIII. 1825, sect. 4.

2469. Whenever any native ministerial officer is desirous of resigning his office, his resignation is to be received and recorded by the magistrate in open court; and is to be transmitted without delay to the superintendent of police with the nomination of a proper

person to be his successor, in conformity with the above provisions. Reg. VIII. 1809, sect. 5, cl. 3 ; and sect. 7, cl. 2. superintendent of police.

2470. When a magistrate sees cause for the removal of any such officer on the ground of misconduct, neglect of duty, experienced incapacity, or other disqualification, he is to report the circumstances of the case, with his opinion on the subject, to the superintendent of police, who is to pass such order as appears proper on the report so made ; or to call for further information ; or to direct any further inquiry which the nature and circumstances of the case require. Reg. VIII. 1809, sect. 5, cl. 4 ; sect. 7, cl. 2. officer is to be reported to the superintendent of police,

2471. The magistrate is to forward such report for confirmation to the superintendent of police without delay. C. O. Sup. Pol. *L. P.* No. 1 of 1838. without delay.

2472. On the dismissal of any ministerial officer, receiving a salary of not less than eight rupees per mensem, the magistrate is to forward a report of the same to the superintendent of police in the form No. 23 of appendix C, that he may prepare a register of the names of such persons, in conformity with the orders of the Court of Directors : an extract from this register is to be forwarded to the magistrate at the close of each year to enable him to guard against the admission of improper persons into the public offices. C. O. Sup. Pol. *L. P.* No. 10 of 1842. A special report of dismissed officers is to be made to the superintendent of police for the formation of a register.

2473. In cases of gross misconduct, neglect, or incapacity, such as to require the immediate suspension of any such officer, the magistrate is authorized to order the same, reporting it with the other information required from him to the superintendent of police. Reg. VIII. 1809, sect. 5, cl. 5 ; and sect. 7, cl. 2. Magistrate may immediately suspend officers in cases of gross misconduct.

2474. As a suspended officer is entitled, if restored, to the arrears of his salary, which have accrued during his exclusion from office, any extra charge, which arises from inattention to the orders for his restoration, may be retrenched, by order of government, from the allowances of the person by whose fault the restoration to office has been delayed after receipt of orders to that effect from a competent authority. C. O. No. 254 of vol. 1.

2475. Any other inferior native officer forming part of the fixed establishments, whose salary does not amount to the sum of 10 rupees per mensem, may be appointed whenever vacancies occur in the situations of such officers, and on proof of misconduct or other sufficient cause may be removed by the magistrate, without any reference to any superior authority. But he is to record upon his proceedings the grounds upon which any native officer is removed by him ; and he is required to exercise the power vested in him, in the appointment and removal of the inferior officers acting under him, with due regard to the public service and the rights of individuals, by selecting proper persons to fill all vacancies in the situations of such officers, and by continuing in office the persons appointed, whether by themselves or their predecessors, whilst they discharge the duties assigned to them with diligence and integrity. Reg. V. 1804, sect. 14. Reg. VIII. 1809, sect. 9. The salary than 10 rupees, rests with the magistrate. But he is to select proper persons ; and is not to remove them without cause ; and is to record his reasons for removing them.

2476. The magistrate's order in regard to the appointment and removal of native [ministerial] officers receiving a salary not exceeding ten rupees is in every respect final. Const. No. 940. His orders are final.

Magistrate may
fine any officer one
month's salary,

2477. The magistrate may in addition to the general powers vested in him by the regulations for the punishment of any specific crime or misdemeanor, fine any officer under his authority for neglect of duty in a sum equal to one month's salary, and cause the same to be levied by a stoppage of the fixed allowance payable to such officer. Reg. VIII. 1809, sect. 5, cl. 5; and sect. 7, cl. 2.

but cannot award
a higher punish-
ment.

2478. The magistrate is not authorized to sentence to hard labor an officer guilty merely of neglect of duty, nor to adjudge a fine of more than one month's salary. Const. Nos. 192 and 712.

Session judge

2479. It is not competent to a session judge to interfere with any order passed by a magistrate regarding the appointment, suspension, or removal of any ministerial or police officer, the revision of which is entrusted to the superintendent of police. Act XXIV. 1837, sect. 5.

cers.

But he may di-

2480. A session judge, holding a jail delivery, or the court of nizamat adawlut, may order the dismissal of any native officer convicted before him, of a criminal offence, which under any express provision in the regulations is punishable by dismissal from office; or, though not so expressly declared, if the conduct of such native officer appears, from any proceeding before the sessions court or nizamat adawlut, to be such as to require his removal from the public situation held by him. On the same being notified to the magistrate, or other European public officer, under whom the native officer so dismissed has been employed, it is the duty of the magistrate, or other European officer, to take measures for the appointment of a successor to the vacant office in conformity with the regulations. Reg. XXV. 1814, sect. 15. Reg. XVII. 1816, sect. 7, cl. 8.

What appeals lie
to the superinten-
dent of police.

2481. The appeals of parties seeking redress from orders of magistrates dismissing them from their situations, such orders not being part of the sentence passed in any criminal trial, cannot be heard by the session judge, but lie under the law to the commissioner. C. O. No. 35 of vol. 3.

What appeals lie
to judge.

2482. Appeals from the orders of the magistrate preferred by officers other than ministerial or police officers(a) lie to the session judge. C. O. No. 119 of vol. 3.

Appeals may be
forwarded by dāk;

2483. Commissioners may receive and act upon petitions from suspended officers forwarded by the dāk, provided they are written on stamp paper. Const. No. 344.

or may be present-
ed to the magis-
trate, who is to
forward them with
the papers of the
case, if written on
stamp paper and

2484. Ministerial officers dissatisfied with the orders of a magistrate, may present their petitions of appeal to the magistrate, if written on the proper stamp paper; and, if it be presented within the usual period allowed to appellants, the magistrate is bound to forward the appeal with the papers of the case for the orders of the superintendent of police. In case the officer suspended or dismissed does not present his petition of appeal to the magistrate within the period allowed, he is to refuse to accept it, and is to refer the officer to a personal appeal at the office of the superintendent. C. O. Sup. Pol. L. P. No. 20 of 1838.

(a) This order refers in the original to officers attached to the jails; but is of course, in regard to them, superseded by Act XVIII. 1844.

2485. If the course prescribed in the above order is not adopted by police officers appealing, they must forward to the superintendent with their petitions of appeal copies of the proceedings ordering their dismissal, without which their petitions will not be attended to. One of the two courses referred to must be followed. C. O. Sup. Pol. L. P. No. 24 of 1844.

If the appeal is forwarded by dāk, it must be accompanied by copies of the proceedings appealed against.

2486. When appeals are received by dāk, and no one is present at the station of the commissioner to attend at their hearing, they may, without objection, be taken up and disposed of as the commissioner may find to be most convenient, with reference to the other business which demands his attention. But where parties interested in an appeal, whether as principals or agents, are in attendance, the hearing should invariably be held by the commissioner in his public office, with a sufficient previous notice of the day fixed by him for the purpose, so that those concerned may have full facility for appearing, and for making such statements as they may wish to offer in support of their applications. The order on the appeal should also be passed in their presence, and personally explained to them by the commissioner. C. O. Govt. W. P. No. 49 A, January 11, 1854.

Facilities to be given for personal attendance of appellant during the hearing of his appeal.

2487. The superintendent of police is fully competent, of his own accord and on sufficient ground, to remove any of the officers, whom he is competent to remove on reference from the magistrate. Const. No. 62.

Superintendent of police may dismiss officers of his own accord.

2488. A commissioner of circuit has no power to declare a native officer perpetually excluded from future employ in his division, although he is of course competent to decline sanctioning his nomination to any responsible situation during the period he is in charge of the division. Const. No. 1065.

A commissioner cannot declare a person excluded from future employ in his division.

2489. The orders of the superintendents of police in regard to the appointment, suspension, or removal of a ministerial officer of a magistrate, passed under the provisions of this Act, are not open to revision by the nizamut adawlut. Act XXIV. 1837, sect. 6.

The nizamut adawlut cannot revise the orders of the superintendent of police.

2490. No report to the nizamut adawlut is necessary previous to the dismissal of any ministerial officer of a magistrate's court. It should be made to the superintendent of police, who is competent to pass such order as the case requires. Const. No. 792.

Magistrate need not report the dismissal of any officer to the nizamut adawlut.

2491. Nothing in this regulation is to be construed to preclude the government, or the court of nizamut adawlut, from ordering the removal of a native officer, upon just and sufficient ground appearing for such order; nor to prevent the exercise of the general authority vested in the nizamut adawlut by the regulations in force. Reg. VIII. 1809, sect. 13.

But or the awlut the dismissal of any officer.

2492. Appeals from orders for the removal of ministerial officers on the establishment of the magistrate and collector, employed indiscriminately in the departments of revenue and the administration of criminal justice, lie to the commissioner: unless a regular criminal trial has been held, in which case they would lie to the session judge. C. O. No. 177 of vol. 2.

Appeals from officers employed in both the revenue and judicial departments.

2493. A monthly report is to be made to the superintendent of police of the dismissals and appointments of ministerial officers, in addition to the reports made to him for confirmation, according to the form No. 7 of appendix F. C. O. Sup. Pol. L. P. No. 1 of 1839.

Monthly report of dismissals and appointments.

OF NATIVE MINISTERIAL OFFICERS.

2494. All native officers in the service of government are liable to removal from the public trusts committed to them, without proof of any specific act of criminality, whenever there is sufficient reason to believe them incapable, or neglectful, of their prescribed duties, or in any respect unworthy of public confidence. Reg VIII. 1809, sect. 5, cl. 5; sect. 7, cl. 2;

All native officers are liable to removal without proof of any specific act of criminality.

2495. The imposition of heavy fines upon native servants is objectionable, as involving them in pecuniary difficulty, and inducing them to resort to improper practices for the purpose of indemnification. The preferable course is, when an officer refuses to do that which his official duty requires of him, to transfer at once the office to a more obedient holder. C. O. No. 60 of vol. 3.

The imposition of heavy fines is objectionable.

2496. The fact of an officer's possessing much more property than the lawful emoluments of his office seem to authorize, without being able to give a reasonable account thereof, is a sufficient ground for presuming him a person unfit for public confidence. Const. No. 306.

The unaccountable possession of property is a sufficient ground for presuming an officer unfit for public confidence.

2497. The criminal courts are authorized to require mochulkas or penal obligations for their good behaviour, in such sums as they judge proper, from their native officers. *Beng. Reg. XIII. 1793, sect. 2. Ced. Prov. Reg. XII. 1803, sect. 2.*

Mochulkas may be required from native officers.

2498. The serishtadars, or other head native officers, munshis, mohurirs, and nazirs, record keepers, and treasurers, as well as all other native officers of the criminal courts holding any situation of trust and responsibility in the public service, previous to entering upon the execution of the duties of their offices, are to make and subscribe the following solemn declaration in open court, before the European authority to whom they are subject:—"I, A. B., appointed to the office of serishtadar [or as the case may be] to the nizamat adawlut [or other court] solemnly declare that I will truly and faithfully perform the duties of the office to which I have been nominated to the best of my knowledge and ability; that I will not receive, directly or indirectly, any present, or nuzzur, in money or effects of any kind, from any party whomsoever, on account of any suit to be instituted or which may be depending or have been decided in the court; that I will not knowingly permit any person or persons under my authority, or in my immediate service, to receive directly or indirectly any present or nuzzur, in money or effects, from any party or person whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided in the court; and that I will not derive directly or indirectly any advantages or emoluments from my office, excepting such as the orders of government do or may authorize me to receive." *Beng. Reg. XIII. 1793, sect. 4. Ced. Prov. Reg. XII. 1803, sect. 4. Reg. XVIII. 1817, sect. 2, cls. 1, and 2; and sect. 3.*

All native officers are to make a solemn declaration before entering upon the duties of their office.

2499. The European officers, before whom such declarations are required to be made, and subscribed, are to attest the same as publicly read and subscribed before them, in pursuance of the above provisions; and are to be careful to enforce a due observance of the rule therein contained by the native officers appointed to act under them. *Reg. XVIII. 1817, sect. 2, cl. 3.*

The European officers are to attest such declarations.

2500. The native officers attached to the courts are to procure all acts of the court to be executed; to translate and transcribe papers; and to arrange and keep the records of the court. They are to perform these duties in the manner, and conformably to the rules, which the head of the office to which they are attached thinks it proper to prescribe. The native officers of each court are not to interfere in any other manner, publicly or privately, in any cause or matter depending before the court, or which has been, or is intended to be, brought before it. *Beng. Reg. XIII. 1793, sect. 8. Ced. Prov. Reg. XII. 1803, sect. 11.*

Duties to be
formed by native
ministerial officers.

2501. The whole of the officers of government are prohibited, under penalty of dismissal from office, from employing, directly or indirectly, their private servants of whatever description, or any other persons not being public officers duly appointed or nominated in conformity with the rules in force relative to such appointments, in the discharge of any part of their public duties, or in the execution of any public duty, in which the person so employed has not been duly authorized to act. *Reg. VIII. 1825, sect. 2, cl. 1.*

Officers are pro-
hibited from em-
ploying their pri-
vate servants in the
discharge of public
duties ;

2502. The whole of the judicial officers are, in like manner and under the same penalty, prohibited from employing any of the public officers on their establishment (not being peons, or other inferior servants, in personal attendance upon a judge, magistrate, or other officer of government in the judicial department) in the performance of any part of their private business, or in the execution of any private trust relating to their personal concerns. *Reg. VIII. 1825, sect. 2, cl. 2.*

and from employ-
ing public officers
on their private
business.

2503. The several officers of government in the judicial department, who are already restricted by their official oaths, or by the known declarations and orders of government, from deriving any personal advantage whatever from their fixed establishments of native officers, are further positively prohibited from making any alteration whatever in the distribution of the salaries of such officers, or in the number and designation of the several descriptions of native officers composing their authorized establishments, without the express sanction of government. *Reg. V. 1804, sect. 23.*

No alteration is

officers.

2504. Nothing in this regulation is to be construed to empower the superintendent of police to authorize any addition to, or alteration in the distribution of, the fixed public establishments without the special sanction of government. *Reg. VIII. 1809, sect. 12.*

Nor can the su-
perintendent of po-
lice authorize any
alteration or addi-
tion.

2505. Native ministerial officers are not, under any circumstances, to be entertained on lower salaries than those fixed by the government for the situations they hold. *C. O. No. 154 of vol. 3. L. P.*

Officers are not
to be entertained
on lower salaries
than those fixed.

2506. The practice of keeping ministerial officers in acting capacities for long periods is highly objectionable : whenever an officer nominates an individual to act in any situation, whose confirmation in the same requires the sanction of superior authority, he is to make a report to such authority as to the fitness of the officiating person within the period of six months from the date of his original nomination. *C. O. S. D. A. No. 12, January 1, 1830.*

2507. Nothing in this regulation is to be construed to establish a claim of inheritance to any public office whatever ; or to prevent the abolition of any such office, by order

ditary.

of government, whenever it is judged unnecessary to continue the same for the public service. Reg. V. 1804, sect. 24.

Schedule of pro-

2508. On the appointment of any native officer, who receives a salary of not less than 20 rupees per mensem, whether the situation to which he is nominated be of a judicial or ministerial nature, or connected with the police department, he is to be required to give a schedule of any landed property of which he may at the time be possessed, including not only land, the proprietary right of which is vested in him, but any land or other real property whatever may be the nature of the tenure by which he holds it, the description of tenure being also recorded in the schedule. It is at the same time to be explained to him that should he subsequently make further acquisitions of the same description, it will be incumbent on him to communicate the circumstance within one month from the date of acquisition; should he fail to do so, or should it appear that he has wilfully omitted in his schedule any such property belonging to him at the time of filing it, he is liable to dismissal from office. In the *Western Provinces*, these schedules are to be registered in the office of the collector of the zillah in which the officer is employed; and copies of the same sent to the collectors in whose zillahs the property therein included is situated. In the *Lower Provinces*, the schedules are to be registered in the office to which the individuals giving them are subordinate; and copies are to be sent to the collectors in whose districts the property specified is situated. C. O. Nos. 163, 166, and 170 of vol. 2.

Subsequent ac-
tivity is forbidden;

and report to be
made if acquired
by inheritance.

2509. The purchase, or acquisition in any other manner than by inheritance, by any person holding a judicial post, or any executive or ministerial office in the judicial or revenue department in the *Western Provinces*, of landed property or of any interest in land within the limits of the district, in which he serves, will subject the officer to the penalty of dismissal from his appointment: and the acquisition by such persons of any property or interest in land by inheritance must be immediately reported for the orders of the superior authority of the department. Govt. Order *W. P.* No. 1662 A, September 6, 1854.

Security is to be
taken from all offi-
cers entrusted with
public money.

Sufficiency of se-
curity to be tested
yearly, and report
made.

2510. Security is to be taken from treasurers, nazirs, and other officers, who, in the discharge of their public duty, have charge of money or property, whether public or belonging to private individuals; and the sureties are to bind themselves to make good all losses sustained by the default or fraud of the officer for whom they are bound. The amount of property to be pledged by the surety, and entered in the schedule at the foot of the bond, must be regulated according to the circumstances of each case and the amount or value of the money or property which may be likely to be left in the hands of the officer from whom the security is required: the surety is also to bind himself not to sell, or in other manner alienate the property in question until he is relieved from his responsibility. Care is to be taken to ascertain the sufficiency of the security; and its efficiency is to be carefully revised during the last week of December of each year; and a report of the result of the revision is to be submitted in the form No. 26 of appendix C. C. O. S. D. A. No. 34, September 23, 1831.

Report to be cer-
tified in particular
form.

2511. The form prescribed above is to be uniformly engrossed on a sheet of foolscap paper; and the following certificate is to be inserted at the foot of it. "Certified that I have

revised the securities of the officers above mentioned, and that I consider them good and sufficient. (Signed) A. B. judge, or magistrate, as the case may be." C. O. No. 216 of vol. 2.

2512. There is no objection to its being left optional with parties, nominated to offices under government requiring the execution of a security bond, to have that bond prepared by their own advisers. It is at the discretion of heads of offices to accept such bonds on their own responsibility, or to refer them, for approval on the part of government, to the law officers of the Company. C. O. No. 72 of vol. 4. *L. P.*

Persons
nated to offices may
have the security
bonds prepared by
their own advisers.

2513. Persons actually in the employment of government, whether in the civil or military department, are not liable to any charge for the preparation and execution of any documents connected with their appointments, which the law officers of the Company may be required to draw by the heads of the offices or departments in which such persons are employed. C. O. No. 77 of vol. 4. *L. P.* C. O. Sup. Pol. *L. P.* No. 2 of 1852.

And are not li-
able for the charges
of preparation and
execution by the
law officers of go-
vernment.

2514. Public officers vouching for the sufficiency of the securities render themselves responsible for the safety of the public funds committed to the charge of their ministerial officers, and they are to be held accountable for any insufficiency of security which is subsequently experienced. C. O. No. 171 of vol. 2.

Responsibility of
of securities.

2515. In the *Lower Provinces*, the above security statements are to be forwarded by the magistrates to the superintendent of police, and not to the nizamat adawlut. C. O. No. 87 of vol. 3. *L. P.* C. O. Sup. Pol. *L. P.* No. 22 of 1838.

These reports
are to be sent to
the superintendent

2516. In order that the security bonds may comprehend all the obligations assumed by the sureties, judicial officers (in the *Western Provinces*) are required to have them drawn out according to the formula No. 27 of appendix C: and in reporting the result of the annual revision, they are to certify that the bonds have been carefully examined and found to correspond in their terms with that formula; and that memorials thereof have been registered in pursuance of the following instructions. C. O. No. 188 of vol. 3. *W. P.*

Form of security
bond to be us
the Western
vinces.

2517. With reference to the precedence granted to all registered documents by Acts I. and XIX. 1843, all security bonds executed by the treasurers, nazirs, and other ministerial officers attached to the judicial courts, and other documents likewise of a similar character, by the annulment or repudiation of which the interests of government are likely to be injuriously affected, are to be duly registered in conformity to the conditions of those enactments; [the authorities are to satisfy themselves that the lands, to which the registered security deeds relate, have not been already conveyed away by any previously registered deeds;](a) and such registration [and scrutiny](a) is to be deemed an indispensable preliminary to their acceptance as good and valid engagements. The fees attendant on this process are to be defrayed by those, from whom security is demanded, and whose tenure of office is dependant on their compliance with such requisition. C. O. No. 136 of vol. 3.

All security
bonds are to b

2518. If it be shown on a civil prosecution that the nazir of a criminal court has wilfully misrepresented the value or sufficiency of any security, in regard to which he has

wilful misrepresen-

(a) The words within brackets are not contained in the circular of the Western court.

tation of the sufficiency of security.

been directed to enquire and report, and that loss has ensued in consequence of such misrepresentation on his part, he would be liable to the payment of damages at the discretion of the court before whom the suit is brought. Const. No. 1014.

Rules for the endorsement and safe custody of public

2519. When deposits are made by the sureties in public securities, they are to be endorsed over to the official head of the office, and deposited for safe custody with the sub-treasurer of the general treasury. Such securities are returnable only under an official order from the secretary to the government in the department to which the depositor belongs. Under these circumstances, if, with the permission of government, the parties should so desire it, the sub-treasurer is to draw the interest accruing on the securities in his custody, and pay it over to the officer concerned, in cash if in Calcutta, or by bill on the revenue treasury of the district, if the deposit is for due performance of duty in the mofussil. Govt. order in C. O. Sup. Pol. *L. P.* No. 12 of 1845. C. O. Acc. Gen. No. 94, September 29, 1845.

Responsibility of collectorate treasurer taking charge of treasury.

2520. When the treasurer of a collectorate is also required to take charge of the foudaree treasury, it is incumbent on the collector to insert in the security bond a clause rendering the sureties responsible for any abuse of trust by the treasurer in the foudaree department. C. O. No. 51 of vol. 3 *L. P.* Under C. O. May 28, 1847, the separate treasuries of the judge's and of the magistrate's courts are abolished. The duties of the office are to be discharged by the collector's treasurer.

One department

ap-
am-
em-

2521. All departments of the state are required not only not to invite, but positively to refuse to entertain an application for employment from any native, who is at the time of making the application in the public employ of a government office or department, unless they have previously received the full acquiescence of the head of such office or department. C. O. No. 66 of vol. 3.

Persons dismissed from one department (except for inaptitude in that department)

other department.

2522. Men, who have been dismissed for misconduct from one department, are not to be considered eligible for re-employment in any other department. It is a wholesome check upon negligence and dishonesty for the servants of government clearly to understand, that probity and diligence are the only means of retaining employment under government. This rule does not apply to cases of inaptitude for some particular branch of occupation, to which a native servant may have been originally appointed, and from which it may have been necessary on that account only to displace him. C. O. Nos. 46 and 75 of vol. 4. *L. P.*

Representations

2523. Representations from uncovenanted officers relating to their services are not to be forwarded to government by the head of the office. All persons desirous of bringing claims prominently to the notice of government should forward their representations themselves by the public post. C. O. No. 68 of vol. 3. *L. P.* C. O. Sup. Pol. *L. P.* No. 23 of 1840.

Travelling allowance.
Provinces.

2524. All amlahs, when on duty in the interior of the district, are to receive 3-10th extra pay as travelling allowance; except when they are required to accompany their superiors by dawk, in which case they are to receive an allowance at the rate of 4 annas per mile, and during halts at the rate authorized above. *Lower Provinces, C. O. S. D. A.*

No. 50, September 20, 1839. C. O. No. 212 of vol. 3. *L. P.* C. O. Sup. Pol. *L. P.* No. 13 of 1839; and No. 10 of 1845.

2525. The travelling allowance of all uncovenanted officers, christian or native, in the revenue, judicial, and political branches of the service, as detailed below, is to be 3-10th of the salary drawn by each individual. When the officer is required to proceed by dāk, under special authority from government, he is to receive at the rate of 4 annas per mile during the time he may so travel, and on the days on which he may not so travel he is to receive at the aforesaid rate of 3-10th of his salary. This scale of allowance is applicable to the fixed establishments of public covenanted officers, when moving from the station, or usual fixed residence of such officers;—to all principal sudder ameens, sudder ameens, moon-siffs, deputy collectors, and deputy magistrates, when required to travel within their districts, or during transit from one district to another, when ordered on the public service, and without a view to their promotion or to their acting in a higher grade;—to all nujeebs, burkundazes, or men of the provincial battalions, when ordered beyond the limits of the district or division within which they are ordinarily required to serve. Govt. Order *W. P.* July 11, 1846. Western Provinces.

2526. The following are the rules for regulating leave of absence and acting allowances to uncovenanted public officers :— Leave of absence.

Section I. Leave of absence to officers not in the covenanted service of the East India Company, receiving their appointments direct from government, will be granted by the government only under which office is held, on application being made publicly through the regular channel in the department to which the applicant may belong; but in respect of all other officers, it will be optional with the local governments to delegate to heads of offices, or departments, power to act upon the rules without special reference to higher authority. *Section II.* Absence without leave will render the absentee liable to loss of appointment, and will be attended with entire forfeiture of salary for the whole period of such absence. *Section III.* No leave of absence shall have any retrospective effect, except in cases of severe illness to be attested by medical certificate conforming in every respect to the directions contained in section 4. *Section IV.* When an application for leave of absence is made on the ground of ill health, it must be accompanied by a statement of the case from the medical man by whom the applicant has been attended, distinctly stating from personal observation the nature of the disease, the symptoms by which it is manifested, the causes by which it has been probably produced, and the period during which it has existed so far as the knowledge of the medical officer extends; and by a certificate from the chief medical officer of the station or district, or if at a presidency town from a presidency or other official surgeon, certifying after careful personal investigation, the necessity for temporary removal, and the period for which absence is, to the best of his judgment, absolutely requisite for restoration to health. If the requisite leave be for a longer period than six months, the certificate must in the first instance be countersigned by the superintending surgeon of the division in which the applicant may be located; and, in cases of leave beyond sea, be afterwards submitted, with the statement of the case, for the consideration and coun- Applications.

If taken with leave.

No retrospective effect.

Sick leave, application for, to be accompanied by medical statement of the case.

If sick leave be required for more than six months.

tersignature of the members of the medical board. The certificate shall be given in the following form :—I, A. B., surgeon at or of — do hereby certify that E. F. (here enter designation of office) is in a bad state of health, and I solemnly and sincerely declare that, according to the best of my judgment, a change of air is essentially necessary to his recovery; and that the circumstances of his case are such as to render leave of absence for the period of — absolutely necessary (or highly desirable). The following form shall be observed by the superintending surgeon and members of the medical board in countersigning the certificate :—I (or we) do hereby certify that, according to the best of my (or our) professional judgment, after careful consideration of his case, I (or we) believe the state of health of E. F. to be such, as to render leave of absence for a period of — absolutely necessary (or highly desirable) for his recovery. An application for extension of leave must, if the applicant be in India, be accompanied by a certificate to a like effect from the medical officer by whom the applicant is attended, together with a statement showing sufficient reason for the extension solicited; and such certificate must be countersigned by the members of the medical board, or by the superintending surgeon of the division in which the applicant may be located. In like manner, if the applicant shall have proceeded beyond the territories under the government of the East India Company, he must furnish a certificate and statement to the required effect from a surgeon or physician, at the place of his temporary residence, by whom he has been attended; such attendance and the period of it to be stated, and the certificate to be countersigned by the examining physician of the East India Company if the absentee is in Europe, or by the principal medical authority of the colony or country to which the absentee may have proceeded; or some sufficient reason stated for the want of such countersignature if not produced. The officer countersigning must either personally examine the applicant, or state some sufficient reason why he has been unable to do so. When any of the required particulars are neglected, leave will be refused. *Section V.* Leave of absence will be granted under the following limitations to servants who may be declared by a sufficient medical certificate to require leave for the restoration of their health:—

1. The limit to leave on medical certificate is fixed at three years during the entire period of service, of which not more than two years may be continuous and two years only will be permitted to reckon as service qualifying for pension.
2. Leave of absence on medical certificate will not be granted for a longer period than twelve months at any one time, which may however be extended, if necessary, under renewed medical certificate, for periods not exceeding six months, within the limit of two years continuously. After a continuous absence of two years on medical certificate, an interval of two years shall elapse before further leave on that account is granted.
3. During one year of the entire period of absence under this rule, the absentee will be subjected to a deduction of one half, and during the remainder to a deduction of two-thirds of his allowances, provided, however, that he shall in no case draw a larger sum than rupees 6,000 (£600) per annum.
4. In cases of extreme urgency, the heads of offices are authorized to grant leave of absence on medical certificate to the extent of one month, provided the same be immediately reported for the sanction of government.

Section VI. Leave of absence may be granted for one month in each year, or, to judicial officers, during the authorized closing of the civil

Application for extension of sick leave.

Period of sick leave allowed, viz.

three years of which two only are service;

not more than 12 months at one time, but may be extended.

Salary.

Cases of extreme urgency.

Without deduction from salary.

courts, without deduction from salary. *Section VII.* 1. In addition to the above, and on sufficient cause being shewn, leave of absence may be granted on private affairs for not more than six months, one-half the absentee's salary being deducted for such period of absence, provided the rate of rupees 6,000 (£600) per annum be not exceeded. 2. The leave granted under this section will be computed from the date of the absentee's quitting his post to the date of his return thereto. A second leave of the same description cannot be taken till the expiration of six years from the date of return to duty from a former leave. No portion of the salary allowed to be drawn will be claimable till the absentee shall have returned to his duty. 3. Leave taken under this and the preceding section will reckon as service qualifying for pension. *Section VIII.* In addition to the leave which may be granted under the preceding rules on medical certificate or private affairs government may at any time under special circumstances and at its discretion, grant leave of absence once during the period of service not exceeding twelve months on private affairs, without forfeiture of appointment, but without pay; such period of absence not to count as service towards pensions. *Section IX.* No leave of absence on private affairs shall be claimable by any party whatever under these rules as a matter of right. Such leave will be granted only at the pleasure of the government or its authorized officers when the concession of the indulgence in no way interferes with the interests of the public service, and it shall be the duty of the government in every instance (except in the case of leave granted under section 6) to consider and determine whether the grounds of the application are sufficiently urgent to justify the concession of the leave. *Section X.* Parties who may desire to draw their allowances while absent on leave, will be required to give security in such amount and form, as may be fixed by government, for the refund of any excess that may be drawn in case of their coming under retrenchment. *Section XI.* No person appointed to a situation under the government shall draw the salary of his appointment for any period prior to the date of his joining it. *Section XII.* An officer holding a situation, appointed to one of equal or higher value, will, until he joins, draw so much of the salary of his new office as may be equal to the salary of his former situation; provided he does not exceed the time allowed for joining under the following rules; should he do so, no salary will be passed to him for such period in excess. *Section XIII.* The time ordinarily allowed for joining an appointment is to be calculated at the rate of fifteen miles a day (Sundays excepted) together with a week to prepare for the journey; but on occasions of emergency, it will be optional with the government to prescribe the period within which any journey is to be performed. *Section XIV.* A person officiating temporarily in any situation, will draw so much of the salary of such situation as may equal the sum deducted on account of absence from the real incumbent, and the substantive allowances of every officer temporarily acting in a situation of superior emolument, will be subject to deduction at the same rate; *but no additional expense is on any account to be incurred by the absence of any officer on leave.* Govt. India, No. 9, February 22, 1856.

On
withsalary not to be
drawn
timeOn private affairs
without salary;

no service.

No leave on pri-
vate affairs can be
claimed of right.

Security.

Allowances com-
mence on joining
appointment.In case
to another
ment.Time allowed for
joining.Salary in acting
appointment.

RECEIVED THEIR

Under section 1 of the above rules, the Lieutenant-Governor of Bengal is pleased to authorize heads of offices and departments to grant leave to their subordinates, to whom

**APPOINTMENTS
DIRECT FROM GO-
VERNMENT.**

* *Sudder court,
board of revenue,
superintendent of
marine, director of
public instruction,
commissioner of
in Calcutta,*

those rules are applicable, and who have not received their appointments direct from government, to the extent and on the conditions specified below:—Every head of an office, or department, may grant leave to persons immediately subordinate to him not exceeding one month in the year, under sections 5 and 6 of the rules, reporting that he has done so to the civil auditor. The authorities named in the margin* may grant leave to officers departmentally subordinate to them, for any period not exceeding twelve months under section 5, or six months under section 7 of the rules, reporting that they have done so to the civil auditor and also to government. All other applications for leave must be submitted to government through the regular channels. The attention of heads of offices and departments is specially directed to sections 4, 7 (Clause 2), and 9 of the rules. Govt. Order *Bengal*, December 6, 1856.

Nazirs

to appoint their
naibs and
peons; and to ex-
ecute mochulka for
their good behavi-
our.

2527. The nazirs of the several courts of judicature are allowed to appoint their own naibs, and the mirdahs or peons, or any similar descriptions of public servants employed under their immediate direction and control; and to fill up all vacancies, which from time to time occur in such appointments, subject to the approbation of the judges and magistrates superintending the courts to which they are attached. They may also remove the persons so appointed by them, provided they can state sufficient cause to the satisfaction of the judge or magistrate; but not without his previous knowledge and sanction. The nazirs are to enter into a mochulka or penal obligation, in such sum as is required by the courts to which they are attached, for the good behaviour of the naibs, mirdahs, and peons, whom they appoint. *Beng. Reg. XIII. 1793, sect. 2. Ced. Prov. Reg. XII. 1803, sect. 2. Reg. V. 1804, sect. 12.*

may re-
ceive a commission
one anna in the
sale
pro-
perty.

2528. The payment of a commission of one anna in the rupee is authorized to be made on the proceeds of the sale, to the nazirs of the foudaree courts, who are ordered to sell unclaimed property, as a remuneration for proper care in the preservation of the property, and for seeing that it is fairly and properly sold at auction, subject to the condition that the duty has been, in each case, performed to the satisfaction of the head of the office. C. O. No. 116 of vol. 3.

**English wri-
ters**

are subject to the
same rules as other
amlah.

2529. The appointment and removal of English writers, natives of India, is to be governed by the above rules. Const. No. 31.

SECTION II.

OF LAW OFFICERS.

2530. The law officers of the sudder dewanny adawlut are the law officers of the nizamut adawlut; and the law officers of the civil courts are the law officers of the court of sessions of the same zillah.(a) *Beng. Reg. XII. 1793, sect. 4. Ced. Prov. Reg. XI. 1803, sect. 4.*

Appointment.

2531. The Mahomedan law officers of the sudder dewanny adawlut, and the civil courts, are to make the following solemn declaration in their respective capacities of law officers to the nizamut adawlut, and the courts of sessions: "I, A. B., Mahomedan law officer of the nizamut adawlut (or of the court of sessions of zillah ———), solemnly declare that I will truly and faithfully perform the duties of Mahomedan law officer of the court, according to the best of my knowledge and ability; and that I will not receive, directly or indirectly, any present or nuzzer, either in money or in effects of any kind, from any party in any suit or prosecution to be instituted, or which may be depending, or have been decided in the nizamut adawlut (or sessions court) of which I am law officer; nor will I directly or indirectly derive any advantage or emolument from my office, excepting such as the orders of government do or may authorize." *Beng. Reg. XII. 1793, sect. 6; and Reg. IX. 1793, sects. 37 and 71. Ced. Prov. Reg. XI. 1803, sect. 6; Reg. VII. 1803, sect. 8; and Reg. VIII. 1803, sect. 8.*

Solemn declaration to be made on entering office.

2532. Whenever from the absence of the proper law officer, or other emergency, the services of an officiating law officer are necessary to carry on the duties of the sessions, and there is not sufficient time, without inconvenience, to make a previous reference on the subject to the nizamut adawlut, it is competent to the session judge to employ a duly qualified individual of the Mahomedan persuasion, to officiate as law officer; a special report of such temporary arrangement being immediately made in each instance for the information and orders of the nizamut adawlut. *Reg. IV. 1830, sect. 3.*

Session judge may appoint a person to officiate as law officer in case of emergency.

2533. Persons officiating as law officers under the above provisions, if not holding any other office under government, are entitled to receive the same pay as the Mahomedan law officers of the courts, viz. 100 rupees per mensem, during the time they are employed on the sessions. The judge should charge the pay of the officiating officer in his contingent bill, submitting to the civil auditor the order of government, or of the nizamut adawlut, as his authority for the charge. *C. O. No. 61 of vol. 2.*

Salary of such officiating officer.

2534. The session judge is to report to the nizamut adawlut every instance, in which it appears that the Hindoo or Mahomedan law officers have shown incapacity for their offices, or have been guilty of misconduct in the performance of their duties, or of any acts of profligacy in their private conduct. *Beng. Reg. IX. 1793, sect. 60. Ced. Prov. Reg. VII. 1803, sect. 29.*

Session judge is to report incapacity or misconduct of law officer.

(a) The rules for the nomination, appointment, and removal of law officers belong rather to the department of civil law, and have therefore been excluded from this work.

Magistrate has
no control over law

2535. A magistrate has no control over the law officer of the sessions court in such capacity; and is not authorized to direct the government pleader to communicate with such officer on a matter relating to a futwa delivered by him in a criminal trial before the sessions. Const. No. 631.

Prohibited from
trading

2536. Native judges of all grades, and law officers, are prohibited, under pain of dismissal from office, from being engaged in any trading speculations. If such speculations devolve upon any such officer by inheritance, he is within one month to make known the circumstance to the judge, or to the register of the sudder dewanny adawlut, and to terminate his connection with such transactions at the earliest practicable period. If he is unable to do so within one year, he is either to resign his situation, or to report the circumstances of the case to the judge or register, who is to forward it to government, or the sudder court, as the confirmation of the officer is vested in one or other of those authorities, with his own opinion as to the propriety of allowing the officer a further period for the purpose of bringing his transactions to a close. Candidates for such offices are to certify in their applications, that they are not engaged in any trading speculation; and if it is subsequently discovered that they were so engaged at the time of making their application, they will be liable to be dismissed. C. O. No. 109 of vol. 3.

Prohibited from
lending money to
persons within their
jurisdiction.

2537. The rule in sect. 2, Reg. XXXVIII. 1793 (*Ced. Prov.* sect. 2, Reg. XIX. 1803) prohibiting public officers from lending money to persons within their jurisdiction, is extended to all uncovenanted judicial officers. This prohibition does not, however, extend to the officers on the ministerial establishments of the several civil and criminal courts, but to those functionaries only, who are legally empowered to exercise judicial functions. C. O. No. 186 *L. P.* and No. 198 *W. P.* of vol. 3.

Prohibited from
holding lands.

2538. Uncovenanted judicial officers, as all other public officers, are prohibited from holding land in any district in which they exercise civil authority. C. O. No. 202 of vol. 3. *L. P.*

Travelling allow-
ance.

2539. The travelling allowance of a law officer on circuit is 2 rupees a day, if his salary exceeds 100, and is not above 200 rupees per mensem. If above 200 rupees per mensem, it should be 3 rupees a day. C. O. No. 106 *W. P.* and No. 120 *L. P.* of vol. 2.

Leave of absence.

2540. Applications of law officers for leave of absence are to be forwarded to the nizamut adawlut by the session judge, with his opinion as to the propriety of compliance with the same. C. O. No. 77 of vol. 3. *L. P.*

Salary during leave.

2541. A deduction of one half of the fixed salary of a law officer is to be made in the event of absence from his station at any other period than the regular vacations. C. O. S. D. A. No. 172, November 26, 1841.

SECTION III.

OF PUBLIC ACCOUNTANTS.

2542. Every public accountant shall give security for the due discharge of the trusts of his office, and for the due account of all moneys which shall come into his possession or control, by reason of his office. Act XII. 1850, sect. 1.

Public accountant to give security.

2543. In default of any Act having special reference to the office of any public accountant, the security given shall be of such amount and kind, real or personal, or both, and with such sureties (regard being had to the nature of the office) as shall be required by any rules made or to be made from time to time, by the authority by which each public accountant is appointed to his office, subject to the approval of the governor or governor in council of the presidency or place. Act XII. 1850, sect. 2.

Amount of security how regulated.

2524. Every person is a public accountant within the meaning of this Act, who, by reason of any office held by him in the service of the East India Company, is entrusted with the receipt, custody, or control, of any moneys or securities for money, or the management of any lands belonging to the East India Company ; or, as official assignee or trustee, or as surbarakhar, or in any other official capacity, with the receipt, custody, or control, of any moneys or securities for money, or the management of any lands belonging to any other person or persons. Act XII. 1850, sect. 3.

Who is a public accountant.

2545. The person or persons at the head of the office to which any public accountant belongs may proceed against any such public accountant and his sureties, for any loss or defalcation in his accounts, as if the amount thereof were an arrear of land revenue due to government. Act XII. 1850, sect. 4.

He may be proceeded against for loss or defalcation as for arrear of land revenue ;

2546. All regulations and Acts now or hereafter to be in force for the recovery of arrears of land revenue due to government, and for recovery of damages by any person wrongfully proceeded against for any such arrear, shall apply, with such changes in the forms of procedure as are necessary to make them applicable to the case, to the proceedings against and by such public accountants. Act XII. 1850, sect. 5.

and rules ^{there} regarding one apply to the other.

2547. All the sales of estates, summarily sold before the passing of this Act, in satisfaction of the security bonds of any public accountants within the meaning of this Act, shall be deemed as good and valid, and be as liable to be reviewed and annulled, as if such estates had been sold under authority of this Act, and no further or otherwise. Act XII. 1850, sect. 6.

Validity of previous sales.

SECTION IV.

OF CHARGES OF CORRUPTION, ETC.

Summary inquiry to be instituted if a native ministerial officer is accused or suspected of embezzlement of money entrusted to him in his official capacity.

2548. Whenever any native officer, attached to a civil or criminal court, is charged with having embezzled any money or other property paid into, or deposited in, the court to which he is attached; or received by him in his official capacity in execution of a decree, or on account of a deposit, or on any other account whatever; or whenever the judge or judges of a civil or criminal court have reason to suspect any such embezzlement, on the part of a native officer attached to the court; they are immediately to institute a summary inquiry to ascertain the truth of such charge or suspicion; and are, at the same time, to require the native officer accused, or suspected, to give sufficient security for his attendance during the inquiry. In the event of such security not being given, and of its appearing necessary to keep the officer in custody pending the inquiry, it is competent to the judge or judges to order the same, and to keep the party in the custody of peons, or to confine him in the civil jail, until he gives the required security, or his detention appears no longer necessary. Reg. XVIII. 1817, sect. 7, cl. 2.

the money so

2549. When the summary inquiry has been completed, if it is established thereby that any money or other property has been embezzled by the person accused, or suspected, in his official capacity, he is to be required to pay the same into court within such time as is limited for that purpose; and, on his failure to comply with such requisition, it is recoverable from him, as well as from his surety, if he has given security on account of the office held by him, by the usual process of recovery in execution of judgments of the civil courts. Reg. XVIII. 1817, sect. 7, cl. 3.

Salary of officer may be attached.

2550. Any sum of money actually due to a public servant, on account of salary, is liable to attachment in the same manner as other property;—the officer attaching such money is at liberty to call on the disbursing officer to assist him in effecting the attachment; and such disbursing officer is required to give his assistance. Const. No. 827.

But the money so em- to be the deposit- be the officer or not.

2551. Whenever it is established by the above process that any native officer attached to a civil or criminal court has embezzled any money or other property, duly paid into or deposited in the court to which he is attached; or regularly received by him in his official capacity in execution of a decree, or on account of a deposit, or on any other account whatever; it is the duty of the European controlling authority to refund to the party or parties, whose property has been so embezzled, the amount or value of the embezzlement from the public treasury, in the first instance, without reference to the solvency or otherwise of the defaulter or his surety, the government reserving to itself the right of adopting such measures for the recovery of the money so refunded, as is deemed expedient with reference to the nature and circumstances of each case. Reg. III. 1827, sect. 6.

2552. A ministerial officer was convicted of having surreptitiously obtained and corruptly appropriated to his own use money deposited in court. Government applied to the court to realize under the above provisions the amount so misappropriated. But the application was rejected on the ground that the party from whom recovery was sought had not been convicted of embezzlement in the legal acceptance of that term ; and that therefore the amount could not be summarily recovered from him under the provisions cited : the remedy for the government was a regular suit. Carrau's Reports, page 66.

A conviction of embezzlement in the legal acceptance of the term, is necessary to recovery under these rules.

2553. The government cannot be held responsible, under the above rule, to make good to the owners the loss of property stolen from the malkhana of a magistrate's office ; but in cases where neglect or want of care for the prevention of such loss, or the due preservation of the property from such accidents, is proved, the officers in whose custody the goods lost or stolen were placed are to be called upon to make good the value of them. C. O. Sup. Pol. L. P. No. 24 of 1840.

Responsibility when goods are stolen from the magistrate's malkhanah.

2554. The summary decree prescribed above, adjudging the exact sum recoverable, must be passed before the judge can proceed to realize the amount embezzled by a native officer. Const. No. 334.

Summary decree must be passed, before the money is recoverable.

2555. A similar mode of proceeding is to be observed, when a native officer, attached to any civil or criminal court of judicature, withholds any public accounts which it is his duty to prepare and furnish ; and the summary judgment in such cases is not only to order the immediate delivery of the accounts withheld, but is also to impose such fine to government as appears just and proper on consideration of all the circumstances of the case, and the situation of the party. Reg. XVIII. 1817, sect. 7, cl. 4.

Similar mode of proceeding, when a native officer withholds any public accounts.

2556. Any person altering or changing any papers in a government office is liable to the punishment of forgery under Reg. II. 1807 ; and it is no excuse to say that the papers were altered or changed by order of the superior amlah, or the European officer presiding. C. O. No. 57 of vol. 1.

Punishment of native officers altering or changing any official papers.

2557. Though a summary inquiry into cases of embezzlement of the ministerial officers of the judge's court may be conducted by him under the above rules, he cannot commit for that offence, this duty being left to the magistrate, to whom the judge should submit his proceedings if grounds appear for subjecting the accused to a criminal trial ; and the magistrate is in such case to use his discretion in committing or releasing the accused, on a fair consideration of the evidence adduced. Const. No. 691.

The above do not authorize a judge to commit an officer of his court for such offence.

2558. Whenever the local government, or the head officer of a department or office under government, is of opinion that there are good grounds for making a public enquiry into the truth of any imputation of corruption, extortion, embezzlement, or other malversation, committed at any time during tenure of office by any ministerial or police officer subject to the jurisdiction of the courts of the East India Company, and subordinate to such government, or employed in such department or office as the case may be, it shall be lawful for such government, or any such head officer as aforesaid, to prosecute such officer on the part of government in a criminal court, or to nominate some person to conduct such prosecution. And it is also lawful for such government, or head officer as aforesaid, in their or his discretion, to

Prosecution of any subordinate officer on the part of government, &c.

Prosecution may be conducted on the part of govern-

ment, if charge brought by private party.

Not barred by service having ceased.

Prosecution not to be commenced without sanction of board, or other controlling authority.

Trial is illegal without such sanction.

But such sanction is required only for prosecutions on the part of government.

Officer engaged in prosecution, or his assistants, not to act as judge.

Ministerial officers are amenable for corruption to the courts to which they are attached.

Security may be demanded from the person bringing such charge at any time.

against the officers of a sessions court, or of the superintendent

undertake on the part of government, the prosecution in a criminal court of any such charge as aforesaid, which may be brought by an aggrieved private party against any such ministerial or police officer; and such prosecutions as aforesaid are not to be barred or affected by reason of the party prosecuted having ceased to be in the service of government at the time at which the charge may be brought against him. Act XXXII. 1852, sect. 1.

2559. Provided always that no collector, magistrate, nor head of an office in the salt, abkaree, or customs department, under the grade of commissioner, is to commence or undertake a prosecution under this Act until he shall have obtained the permission of the court, board, or officer to whom he is immediately subordinate, to institute the same. Act XXXII. 1852, sect. 2.

2560. Where a deputy magistrate committed a police officer on the prosecution of government without the commissioner's sanction, and the judge returned the case with directions that such sanction should be obtained, and the prisoner was afterwards re-committed on such sanction and tried; it was held that the proceedings were regular. Reports *W. P.* 1855, part 2, page 8.

2561. This restriction is intended to apply only to cases in which it may be desired to institute proceedings on the part of government against the native officers referred to. It is not meant to prohibit the magistrates from entertaining *bonâ fide* complaints from individuals, which may be brought forward in regular course against such officers. C. O. No. 60 of vol. 4. *W. P.*

2562. No collector, magistrate, judge, or other officer, who may prosecute any officer under this Act, or cause such prosecution to be instituted, or who may conduct any preliminary investigation into the conduct of such officer connected with such prosecution, nor any of his deputies, assistants, or subordinate officers, is to act as judge in any such prosecution. Act XXXII. 1852, sect. 3.

2563. The ministerial officers are amenable to the courts to which they are attached for acts of corruption or extortion; and the courts are empowered to receive any such charges that are preferred against them. Previous, however, to receiving the charge, the courts are to require the complainant to make oath [or solemn declaration] to the truth of it; and unless the complainant previously takes the oath, or subscribes such declaration, the courts are not to receive the charge. *Beng. Reg.* XIII. 1793, sect. 9, cl. 1. *Ced. Prov. Reg.* XII. 1803, sect. 12, cl. 1.

2564. Security is not to be demanded, in the first instance, for the prosecution of any such charge. But in the event of its appearing necessary at any time in the course of the enquiry, sufficient hazirzaminee security is to be required from the accuser to attend and prosecute the charge to a conclusion. *Reg.* X. 1806, sect 10.

2565. The nizamat adawlut is empowered to receive any charge of corruption or extortion, not relating to any suit or matter depending before them, or decided by them, that is preferred to them against any ministerial officer of a sessions court, or of the court of a superintendent of police, or of a magistrate, and to refer it to the court to which the

accused is attached by a precept under the seal of the court and attested by the register, of police or of magistrate. provided the complainant proves to their satisfaction, that he preferred the charge in the How to proceed first instance to such court, and offered to make the required oath or declaration, and that the court notwithstanding omitted or refused to receive the charge; and moreover makes the required oath or declaration prescribed above. But if any person prefers a charge of corruption or extortion against any ministerial officer of such court to the nizamat adawlut, in any appeal or matter which is depending, or has been decided, in the two last mentioned courts, the courts are to receive the charge, and to refer it to the court to which the accused is attached without previous enquiry, provided the complainant previously makes the oath or declaration required above. *Beng. Reg. XIII. 1793, sect. 9, cl. 2. Ced. Prov. Reg. XII. 1803, sect. 12, cl. 2.*

2566. The superintendents of police are empowered to receive any charge of corrup- The tion, not relating to any suit or matter depending before them, or decided by them, that is dent of receive preferred to them against any of the ministerial officers of the magistrates within their respective jurisdictions; and to refer the charge to the magistrate to whose court the accused is attached, provided it is proved to their satisfaction that the accused preferred the on receiving such charge. charge in the first instance to such magistrate, and offered to make the oath or declaration required, and that the magistrate notwithstanding omitted or refused to receive the charge. But if any person charges a ministerial officer of any magistrate with corruption or extortion in any matter which is depending before or has been decided by the superintendent of police, the charge is to be received, and referred to the magistrate, to whose court the accused is attached, without further enquiry, provided the complainant previously makes the prescribed oath or declaration required above. *Beng. Reg. XIII. 1793, sect. 9, cl. 4. Ced. Prov. Reg. XII. 1803, sect. 12, cl. 4.*

2567. If the nizamat adawlut receive a charge of corruption or extortion against any ministerial officer of a sessions court, or of a superintendent of police, or magistrate, How the nizamat adawlut is to proceed, if there ap- and there appears, upon a consideration of the circumstances of the case, any objection to referring the charge to the court to which the accused is attached, they are empowered, to the which officer i according as they judge expedient, either to cause the charge to be tried by the sudder dewanny adawlut, or, if the charge is against any ministerial officer of a magistrate, to cause it to be tried by the zillah court to which such magistrate is subordinate. *Beng. Reg. XIII. 1793, sect. 9, cl. 5. Ced. Prov. Reg. XII. 1803, sect. 12, cl. 5.*

2568. If a superintendent of police receives a charge of corruption or extortion against any ministerial officer of a magistrate, and there appears, upon a consideration of the circumstances of the case, any objection to referring the charge to the magistrate to ced objection to refer- ring the charge to the magistrate to whose court the accused is attach- ed. whose court the accused is attached, he may cause it to be tried by the zillah court to which such magistrate is subordinate. *Beng. Reg. XIII. 1793, sect. 9, cl. 6. Ced. Prov. Reg. XII. 1803, sect. 12, cl. 6.*

2569. Charges of corruption or extortion preferred against the ministerial officers of any court under this section, are to be considered as civil actions, and are to be prosecuted Charges of corruption and extortion against minis-

terial officers are civil actions, and to be prosecuted in the civil courts.

in the civil courts. Conformably to this rule, when the nizamut adawlut receives any such charge against their own officers, or exercises the powers vested in them by clause fifth, they are to direct the complainant to prosecute the charge in the sudder dewanny adawlut ; and whenever the other courts receive any such charge against any of their own ministerial officers, or the ministerial officers of any subordinate court, or in the event of any such charge being referred to them, they are to direct the complainant to prosecute the charge before the civil court. *Beng. Reg. XIII. 1793, sect. 9, cl. 7. Ced. Prov. Reg. XII. 1803, sect. 12, cl. 7.*

What award may be adjudged by the civil court.

The accused officers may be suspended.

If the charge is not proved, the accused may sue the accuser in the civil court.

Law officers are subject to the same rules.

The above rules do not preclude a criminal prosecution for corruption, extortion, or em-

Any law officer, or ministerial officer, may be prosecuted criminally, whether the civil action has been brought or not, and whatever is its result; punishment in such cases.

2570. If a native ministerial officer, who is prosecuted for corruption or extortion under this section, is proved to have received or taken the whole or any part of the money or property which he is charged with having received or taken, the court is to adjudge him to refund the amount of the money, or value of the property, which he is proved to have so received or taken, with interest, when it is a case of money taken, at such rate not exceeding 12 per cent. per annum, as to the court appears equitable, and to pay full costs to the plaintiff in the suit. The court is not, in such case, competent to award any fine against the defendant. The courts may suspend a native officer against whom a charge of corruption or extortion is preferred, until the final decision has passed, if they see cause for so doing. *Beng. Reg. XIII. 1793, sect. 9, cl. 8. Ced. Prov. Reg. XII. 1803, sect. 12, cl. 8. Reg. III. 1827, sect. 3.*

2571. If any person prefers a charge of corruption or extortion against any ministerial officer under this section. and the charge is not proved, the accused is to have the option of suing the accuser for damages in any civil court to which he is amenable.

2572. The above rules are applicable to charges of corruption or extortion preferred against the Hindoo or Mahomedan law officers of the several courts. *Beng. Reg. XII. 1793, sect. 8, cl. 1. Ced. Prov. Reg. XI. 1803, sect. 8, cl. 1.*

2573. In explanation of the above provisions for a civil action, it is declared that those provisions, the principal object of which is to enable individuals, who are aggrieved by any of the native officers in question, to obtain redress by an action in the civil courts, are not meant to preclude a criminal prosecution in cases of corruption, extortion, or embezzlement, which appear to call for exemplary punishment. *Reg. XVIII. 1817, sect. 6, cl. 1.*

2574. Whenever there appear to be sufficient grounds for a criminal prosecution against any law officer, or ministerial native officer, on a charge of corruption, extortion, or embezzlement,—whether the civil action provided for above has been brought or not, and whatever, if brought, has been its result,—he is liable to a criminal prosecution before the magistrate, and sessions court, as provided for in other cases of misdemeanor by the regulations; and, on conviction before the sessions court or nizamut adawlut, he is to be subject to discretionary punishment to the extent, and under the provisions, stated in sect. 3, *Reg. II. 1813,** with respect to native officers convicted of making use of the public money entrusted to their care. *Reg. XVIII. 1817, sect. 6, cl. 2. Reg. III. 1827, sect 4.*

* v. para. 2582.

2575. In such cases the prosecution should be public, and conducted by the vakeel of government. C. O. No. 67 of vol. 1. Const. No. 58.

Prosecution to be by the government vakeel.

2576. Under the above provisions, a magistrate is competent to entertain and investigate a charge of corruption preferred against an officer on the establishment of the commissioner of revenue and circuit. Const. No. 649.

Magistrate take up charges against officers of commissioner's court.

2577. A special report of the convictions and sentences which take place under the above rule is to be submitted to government for the purpose of determining whether the guilty persons shall be declared incapable of again serving government in any public capacity. Reg. XVIII. 1817, sect. 6, cl. 3.

Special report of such cases to be sent to government.

2578. The magistrate is competent to pass sentence of punishment on a conviction of a native ministerial officer of bribery or corruption to the extent of the powers vested in him by the regulations, when such punishment appears to him, on a consideration of all the circumstances of the case, to be adequate to the degree of criminality of the accused: otherwise, he should commit to the sessions court. Const. No. 237.

Power of magistrate in such cases.

2579. A provincial court, having commenced an inquiry into the conduct of a native officer, were informed that they should complete it; and, if they considered the case to call for exemplary punishment, direct the government pleader to institute a criminal prosecution against the defendant before the magistrate; but that, in the event of their not deeming it necessary to adopt this measure, it would of course be optional with the prosecutor to do so himself, or to seek redress by instituting a suit against the defendant in the civil court. Const. No. 737.

Cases requiring

criminal court

civil court.

2580. It is not necessary for any party, from whom money or property has been corruptly taken or extorted, to institute a civil action for the recovery thereof; but, on proof of the charge in a criminal prosecution for those offences, a certified copy of the conviction by a sessions court, or the nizamat adawlut, is to be received as sufficient authority for enforcing the refund of the amount or value so taken with interest, on application to that effect being preferred by the aggrieved party to the civil court on the stamp paper required for miscellaneous petitions. Reg. III. 1827, sect. 5.

The civil court may enforce the refund of money corruptly taken without civil action, on production of certified copy of conviction in criminal court.

2581. Bribery and corruption on the part of native ministerial officers in the revenue department, are punishable as misdemeanors under the rules laid down in cl. 7, sect. 2. Reg. LIII. 1803.* Const. No. 1002.

Native revenue officer guilty of corruption.

* v. para. 1814.

2582. Giving bribes to the amlah of a public officer for corrupt purposes, is clearly a misdemeanor both according to the English and Mahomedan law; and, though not specifically mentioned in the regulations, the individual committing it is unquestionably liable to a criminal prosecution. Const. No. 522.

Giving bribes to the amlah is a misdemeanor.

2583. Khazanchies, tuhseeldars, and other native officers entrusted with the public money, are strictly prohibited from making use of such money for their own advantage, or that of any other individual. Reg. II. 1813, sect. 2.

Native officers are not to make use of public money entrusted to them.

2584. Any person infringing the rule contained in the foregoing section is to be deemed guilty of a misdemeanor, and is to be punished, on conviction thereof before a

Punishment to which persons in-

ging this rule
liable.

sessions court, at the discretion of the said court, under the authority vested in such courts by cl. 7, sect. 2, Reg. LIII. 1803, in cases liable to discretionary punishment: provided, nevertheless, that no person convicted of such offence is to be sentenced by a session judge to the punishment of stripes, or to hard labor. If in any instance imprisonment for the term of 7 years appears to the session judge to be an inadequate punishment for the offence, he is to transmit the trial, with his sentiments thereupon, to the nizamat adawlut for the final sentence of that court.* Reg. II. 1813, sect. 3.

* See section of
i.

Such cases to be
reported to govern-
ment.

2585. A special report is to be submitted to government respecting all convictions and sentences, which take place under the provisions of this regulation, in order that government may have an opportunity of considering, whether the guilty persons should not also be declared incapable of again serving government in any public capacity. Reg. II. 1813, sect. 4.

These rules are
applicable to native
officers in the com-
mercial depart-
ment.

2586. The above provisions are still applicable to native officers employed in the commercial department entrusted with public money, and are not affected by the provisions of

CHAPTER VI.

OF JAILS.

SECTION I.

OF THE OFFICE OF INSPECTOR OF JAILS. L. P.

2587. The following orders were issued on the institution of the appointment.

Office instituted
for what purpose.

The office of inspector of jails in the lower provinces was instituted for the purpose of assisting, *first*, in introducing into all the jails of the lower provinces a stricter system of classification, management and discipline; *secondly*, in checking all unnecessary expenditure for establishments, food, &c., and in rendering the labour of the convicts as productive and remunerative as possible; and *thirdly*, in employing to the best purpose whatever sums it may, from time to time be determined to expend, either in the construction of new prisons, or in the repair or alteration of old ones.

2. The first of these possesses a double importance. To the degree in which it may be attained, it will preserve those who are imprisoned for minor crimes from being

corrupted by communication with more hardened offenders; and, by subjecting all to strict restraint, will give the best chance of reformation. It will also have the desirable effect of rendering confinement more an object of dread by the uniform enforcement of labour and the prevention of disallowed indulgences; and it may thus enable the government to diminish hereafter the general terms of imprisonment without impairing the efficiency of the punishment. In all points of view, therefore, both financial and political, whatever improvements the inspector of jails may be able to bring about under this head will be of the greatest value.

3. Few of the existing jails possess facilities for the introduction even of an incomplete classification, or for the profitable employment of all the prisoners within their walls. The attainment of this latter object is considered the first step to a really sound discipline, as that of the former is to any hope of eventual reformation. As regards classification, it

Classification of prisoners.

- * 1. Males under trial for felonious offences.
- 2. Ditto under ditto for misdemeanors (including affrays, assaults and the like.)
- 3. Male prisoners sentenced to imprisonment with labour in irons not redeemable by fine for periods exceeding three
- 4. Male prisoners sentenced to ditto for periods not exceeding three years.
- 5. Male prisoners sentenced to imprisonment without labour or with labour redeemable by a fine.
- 6. Women under trial.
- 7. Women convicted.

N. B.—Prisoners convicted of perjury, forgery, or fraud, to be classed with No. 5, unless a separate ward can be assigned to them. Prisoners for life may remain with No. 3, till they can be withdrawn to separate jails.

appears to the government that *at least* seven separate wards should, if possible, be contrived in each criminal jail, in which the prisoners should be distributed as per margin.* It will be incumbent on the inspector to examine the existing accommodation in each case with a view to this object. He will also inquire, with reference to the extent of the space enclosed within the walls, the demand in the neighbourhood for particular

Labor within the jail.

articles, and in the circumstances what number of the prisoners can be employed with advantage within the interior of each jail. Even the present accommodation admits of a large majority of the prisoners in most jails being employed within the walls. The mode in which these are to be employed, the rules which are to be observed regarding them, and the effect of the stricter confinement both on their characters and on their bodily health, will also engage the inspector's attention. As regards the prisoners also, who in some districts must still for the present continue to work on the roads or elsewhere outside the jail, he will strive to introduce such regulations as may appear to him most likely to check any gross abuse of the increased liberty necessarily afforded them.

4. Under the same general head of management will fall the consideration of the manner in which each jail is cleansed, watched, and guarded; of the system pursued regarding the diet and for supplying the other wants of the prisoners; of the treatment of the sick; of the punishment of offences committed within the jail; together with such other points as may seem to the inspector worthy of attention.

Cleanliness of jail.

Diet.
Treatment of sick.
Jail discipline.

5. The second general subject upon which government wish to have the benefit of the inspector's exertions, viz. that of regulating expenditure upon establishments, &c., and of increasing the returns from labour, requires little explanation. Having the accounts of all the jails in the provinces before him, it will not be difficult for him to observe where good management exists, and to enforce the same throughout the general system.

Regulation of expenditure.

Repair, alteration,
or removal of pri-

6. As regards the third head, the repair, alteration, or removal of prisons, in the first instance the necessity of limiting his views of amelioration to the means which the government possesses is impressed upon the inspector. Undoubtedly one form of building or arrangement of area may be more advantageous than another, and this form should be adopted in all new constructions. But, as regards existing jails, his judgment and ingenuity will rather be exercised in making the best use of the present structures than in devising extensive changes, the expense of which the government is not prepared to incur. If, however, he should anywhere see cause to think that an addition or alteration may be effected at a moderate cost, while it would add much to the security or accommodation of the prison, it will be his duty to propose it in communication with the magistrate for the consideration of government. His attention will be particularly directed to increasing, as far as possible, the security of the jails, so as to obviate the great evil of desperate characters, who have been once apprehended, being again let loose upon society.

Propositions of
local authorities for
alterations, &c. to
be sent through in-
spector.

8. The session judges and the commissioners in the non-regulation provinces will be directed to send up through the inspector's office, all propositions for altering, enlarging, and repairing prisons which they may receive from the magistrates, in order that he may have an opportunity of expressing his opinion on the plan in its first stage. Such propositions should, however, in all practicable cases, be concluded beforehand by the inspector and the local authorities, during his periodical visits to each station. No application for works of the above nature will hereafter be made to the department of public works, without being previously submitted to the inspector.

Insecure jails.

9. There are some jails regarding the utter insecurity or inadequacy of which representations have frequently been made to the government. These will be hereafter brought specially to the inspector's notice, and he will be desired to report separately upon their real state, and the best mode of correcting their deficiencies.

Yearly visit to
each jail.

10. It will be necessary for the due discharge of the duties thus entrusted to the inspector that he should visit each jail at least once in the course of the year, and most of them twice. But this will be required of him at present in respect only of the jails in the regulation provinces, the three northern districts of the South Western frontier agency, Darjeeling, Cachar, and the Cossyah Hills. Arrangements may hereafter be made for the express personal inspection of the jails in the other non-regulation districts where it is at present held by the commissioners. The magistrates and session judges, and the authorities in the non-regulation districts, will be directed to afford the inspector every information on the subjects connected with his appointment, and to pay the greatest attention to his recommendations; and it is confidently expected that he will be able to act in concert with them when introducing his intended reforms.

11. In order to facilitate his enquiries it will be well that all English correspondence offices of the session judges, magistrates, or assistant commissioners, connected with the jails, should be kept in separate books, which, together with all official documents relating to the same subject, will be at all times open to his inspection. A book should

also be kept in each jail in the English and Native languages, in which all orders which may be passed by any competent authority relative to prison management should be entered. This may be termed the “order book of the prison.” It will show him whatever changes may have been introduced since his last visit to the place.

12. As soon as practicable after the completion of his first round of visits, he will furnish the government of Bengal, with a report upon each place of confinement, showing its present state and circumstances together with the improvements which he has introduced, or which he would recommend for adoption. His observations should be classed under the three general heads mentioned in the first paragraph of these instructions, subdivided into as many sections as may be required. General remarks may be added as to the sanitary state of the jail, with the supposed cause of any extraordinary sickness; as to its capacity for containing the numbers usually confined in it; its comparative security for the detention of the more desperate classes of convicts; or the like. These reports will be as brief as practicable, and may be furnished separately for each commissioner’s division. They will be repeated annually if his appointment remains in force, which will chiefly depend upon the advantages which may appear to result from it. The government also expects from him a complete annual report of his operations, and the results thereof, administrative and financial; the first report to be furnished as soon after the 1st May 1855, as possible.

Report.

13. He will draw up and submit for the approbation of government such forms and statements as he may judge it necessary to require from the magistrates and other officers in charge of jails, in order to put him fully in possession of the points which he is required to ascertain. These should be as few, as concise, and as little differing from existing forms, as is consistent with the object. It will also be well that he should draw up a set of rules for the guidance of magistrates on the more important parts of their duties connected with the jails. He will submit these proposed rules to the government, when he shall have had more experience of the points in the present system which especially require amendment. It is desirable that he should, at the same time, obtain and forward the views of the most intelligent and experienced magistrates as to their adequacy. When approved, these rules will be circulated for the information of the magistrates.

What forms and statements should be required.

Rules.

14. He was directed to observe that it was not intended by his appointment to alter the existing system, by which the immediate supervision of the jails is vested in the sessions judges and in the commissioners of the non-regulation provinces. All bills for prison expenditure will continue to be countersigned by these officers as heretofore, and he will communicate officially through them with the magistrates. On the other hand the sessions judges will henceforth, except in cases of emergency, (a) correspond with the government in matters relating to jails through his office, so as to give him the opportunity of adding any remarks which he may wish to offer. It will be his province to suggest to the judges,

Immediate supervision of jails still vested in judge.

Judge to correspond with government through the inspector.

(a) Such for instance as the proposed removal of prisoners in consequence of an outbreak of cholera or other epidemic.

magistrates and other authorities, such changes of system or reductions in expenditure as he may consider advisable. If, as is hoped, he can procure their concurrence in his views, no reference to government will be necessary till the subject is mentioned in his annual report. If otherwise, he will refer the points at issue for the orders of government, furnishing, at the same time, a note of the objections urged by the judge to his suggestions.

as much as possible.

15. The hon'ble the deputy governor regards it as a matter of serious importance that he should encumber himself as little as possible with records, and engage as sparingly as may be in official correspondence. In all ordinary cases, a reference made by a sessions judge through him to the government can be passed on, with a brief remark endorsed on it; and the orders of government can be passed on it in like manner, a brief memorandum of their date and purport being noted in a book. So all ordinary letters addressed to him can be returned with his order, or reply, briefly endorsed on them; and many other ways will occur to him of shortening the usual official forms, and reducing the bulk of his records to a minimum. It will be impossible for him to carry on the duties of inspection efficiently, if his movements are impeded by the necessity of having to carry about with him a quantity of official papers. He should aim at the collection and condensation of all needful information in books of convenient size, so as to be able to dispense as quickly as possible with loose and bulky documents.

Power to sanction expenditure.

16. The inspector is authorized to sanction any item of expenditure for an object of permanent utility, on the adequate advantage of which he and the local authorities may be agreed, to an amount not exceeding 500 rupees. The magistrate will charge the amount in an extra contingent bill, which will be passed upon the inspector's countersignature. He is also authorized to raise the amount of monthly expenditure now allowed for jail manufactures in any jail in which a larger expenditure may seem to be required. Whenever he may exercise the power thus entrusted to him, a full explanation of the circumstances will be expected in his subsequent report.

Diary of proceed-

17. The inspector will keep a brief diary of his proceedings, and forward it weekly for the information of government.

Govt. *Bengal*, No. 2344, December 31, 1853.

Frontier agency.

2588. The inspector of jails *L. P.* was directed to inspect personally the jails in Assam, Arracan, and the two Southern districts of the Chota Nagpore agency, and to exercise the same superintendence and control over those jails, as he does over the other prisons in the lower provinces. Govt. *Bengal* No. 641, March 4, 1856.

Police officers to assist his progress.

2589. Police officers are to render the inspector of jails at all times any assistance, that he may require, to facilitate his progress, whenever the course of his public duty may take him into the district. C. O. Govt. *Bengal*, No. 33, March 10, 1856.

SECTION II.

OF THE JAIL AND JAIL DISCIPLINE.

2590. All magistrates are to submit an annual return of prisoners according to the subjoined form, on the 15th of January in each year, showing the sentences of all prisoners in confinement on the last day of the previous year, as required by the Hon'ble the Court of Directors in their despatch dated 23rd October 1844, No. 14.

Form of annual return of prisoners in custody on the 31st December of each year.

Statement showing the sentences of all prisoners confined in the Jail on the 31st December 185 .

1	2	3	4	5	6	7	8
Number of prisoners sentenced to							Number of life prisoners.
One year and under.	Two years and above one year.	Three years and above 2 years.	Five years and above 3 years.	Ten years and above 5 years.	Twenty-one years and above ten years.	More than 21 years and not for life.	

A. B.
Magistrate.

C. O. Insp. Prisons, W. P. No. 54 of 1854.

2591. When periodical returns and statements relating to prisoners in the jail are forwarded to government, the words "jail statement" are to be superscribed on the outside of the cover. C. O. Govt. Bengal, No. 3630, Nov. 30, 1855.

"Jail statement" to be superscribed on covers of ments.

2592. It is competent to the governor general, by an order in council, to issue such orders as he may, from time to time, deem necessary, for the introduction of a system of discipline into the jails, calculated both to reform the convicts, and to render their imprisonment efficacious as an example to deter others from the commission of crime. Reg. II. 1834, sect. 7.

System of jail discipline.

2593. So much of the provisions of any Regulation, or Act, as vests the judges of circuit, the commissioners of circuit, the superintendents of police, and the sudder nizamut adawlut, with control and superintendence over jails, the prisoners confined in them, the establishments thereunto belonging, and the places of banishment or transportation of prisoners, is repealed. The whole of such control and superintendence is vested in the

Control of jails vested in magistrate and session judge under the orders of the local government.

magistrates and joint magistrates acting under the instructions of the session judges; and the magistrates, joint magistrates, and judges, are to be guided in regard to all matters relating to the jails under their charge, the prisoners confined in them, the establishments thereunto belonging, and the places of banishment or transportation of prisoners, by such orders as they may receive from the local government. Act XVIII. 1844.

Nizamut adawlut not to be addressed regarding

2594. As the nizamut adawlut has been relieved by the above Act from the duty of supervising the management of jails and all matters therewith connected, the criminal authorities are to address themselves direct to government on all matters indicated in that Act, and are to be guided by such instructions as they receive from government. C. O. Nos. 180 and 191 of vol. 3.

Officer in charge is solely responsible; and is to forward reports.

2595. The magistrates, joint magistrates, or other officers in direct charge of jails, are to be held solely responsible for the management of the same to government. The officers in question are to forward the monthly statements of prisoners, and the half-yearly and annual reports, through the session judges to government, receiving through the session judges from government all orders regarding the internal economy of jails, their discipline, establishments, employment of convict labor, and every thing connected with their general management. C. O. Govt. *Bengal*, No. 1072, October 10, 1844.

Alipore jail.

2596. The duty of inspecting and supervising the Alipore jail, which by sects. 11 and 12, Reg. XIV. 1816 is vested in the nizamut adawlut, is now transferred to the judge of the 24-Pergunnahs, whose duties in regard to the said jail are the same as those prescribed for session judges generally, as above. C. O. Govt. *Bengal*, No. 1072, October 10, 1844, para. 10.

Superintendent of police cannot interfere.

2597. A commissioner of circuit is not authorized, either as judge of circuit or as superintendent of police, to issue orders direct to jail officers regarding the management of the jails. But under certain very urgent circumstances in the absence of the magistrate it was held that the commissioner of circuit, who was also superintendent of police, was justified in directly interfering with the management of a criminal jail. Const. Nos. 746 and 909.

Magistrate to visit the jail weekly;

2598. The magistrates are required to visit their jails weekly. And such visits are to be made without previous notice to the officers of the jail, and not at any fixed period of time. Jail rules, sect. 9, paras. 2 and 3.(a)

and judge monthly.

2599. The session judge is to visit the jails monthly, to enquire into their condition and that of their inmates; and to submit to government, when forwarding the periodical statements of the magistrates, or immediately in urgent cases, their own remarks on the condition of the jail for such orders, either in regard to individual cases, or the general conduct of the jail duties, as appear to be required. C. O. Govt. *Bengal* No. 1072, Oct. 10, 1844.

Jail records and visiting book.

* See para. 476.

2600. Jail records and correspondence are to be kept strictly in the manner prescribed in para. 11 of the order appointing the inspector of jails.* The visiting book is to be ruled

(a) The jail rules are quoted from the compilation printed at the Baptist Mission Press in 1828.

longitudinally in triple columns, containing 1, date of visit; 2, remarks of visitors; 3, orders of magistrates. All orders are to be translated, entered in the order book, and signed by the jail darogah, in proof of their having been seen. C. O. Insp. Jails *L. P.* No. 39, February 27, 1856.

2601. The rule precluding the admission of armed men into the jail is not intended to apply to persons whom the session judge takes with him on his visits to the jail. C. O. No. 229 of vol. 1. Judge may take armed men into the jail.

2602. The magistrate is to prescribe a set of written rules for the internal economy of his jail, (a) relating to the articles which may be admitted into the jail for the prisoners, the hours when those articles may be admitted, and the persons who may be permitted to converse with the prisoners; and the jailor and his deputy, as well as the commanding Certain rules to be prescribed by magistrate.

(a) "In the first place I would mention the plan, which I have adopted, of ticketing the prisoners. Every prisoner is supplied, on his entering the jail, with a wooden ticket, which bears the same number as the warrant (perwana) under which he is sentenced: should two or more prisoners be included in one perwana, each of them bears the same number, with the addition of 1, 2, or 3 as his name may stand in the perwana. His blanket and coat are stamped also with the same number. This not only prevents the thefts and the disputes regarding clothing which used to occur, but induces the convict to preserve it with greater care. This system also facilitates the exact registration of all the prisoners, and the register affords immediate information of their names, their crimes, the date of their sentence and its expiration, and the authority by which the sentence has been passed. Whereas, previously, if the jail darogah had been asked the name, or crime, or sentence of any convict, he would have acknowledged his ignorance, and then proceeded to seek for the required information through his books; and would probably have found a convict of the same name, but the son of another person under another sentence; and after pursuing his search through more pages, the required name would at length have been discovered, and the information given; now, under the ticket system, you ask the man his number, and looking down the margin of the register you immediately discover all the information required.—The prisoners are turned out of their sleeping wards at daylight, and five convicts are allotted to the charge of each burkundaz. As he leaves the jail, the darogah delivers to him a paper ticket, in which are detailed his own name, the names of the five convicts allotted to him, and the date of the month; and at the same time the jailor enters, under its particular heading, the nature of the duty on which they are to be employed. The nature of the labor of convicts working outside the jail differs every day, and the tickets also are changed every week, as well as the convicts allotted to each burkundaz. Thus are prevented the fulfilment of any previous arrangements between convicts and their friends to meet at particular spots, and the power of selecting particular duties of an easy nature; and a system of more equal distribution among all the convicts of hard and easy labor is in operation, than obtained when the convicts and their burkundazes could arrange among themselves to proceed to chosen employments. These tickets are re-delivered to the darogah on the return of the burkundaz and his assigned convicts in the evening. At the end of the week the original tickets are brought for my signature, which gives me an immediate opportunity of observing, by a glance at their contents, if any favoritism has been shewn in the distribution of labor.—Convicts sentenced to hard labor are thus distributed to their several duties. Previous, however, to leaving the jail, each convict neatly folds up his blanket (this may appear a small matter to mention, but it has been adopted as a measure of economy to obviate the wear and tear of the convict's blanket, which obtained when his lotah, thalee, and other properties were tied up by the four corners, as well as to prevent the concealment of unauthorized acquisitions) and puts it into a recess fixed in a shed erected for this purpose. This shed is lined with racks, on which are marked numbers from one to the corresponding number of prisoners in jail, each recess of the rack being supplied with a wooden ticket corresponding with the number stamped upon the recess. On placing his property in one of these recesses, each convict receives the ticket of that recess in lieu, and proceeds to labor. On his return from labor, he presents that ticket to an officer appointed to the duty, and receives back his own property in the condition in which he left it in the morning.—Prisoners without labor are thus far treated, with the exception of assignment to any particular burkundaz, in the same manner. When I arrived here, they were in the habit of proceeding, on the recommendation of the civil surgeon, to take exercise in one of the alleys, between the inner and outer walls of the jail, but without order and in noisy conversation. I adopted the plan of marching them out of their ward, and of making them take the same quantity of exercise, namely, for two hours in the morning, and one hour in the evening, in single file, and strict silence.—The female convicts have been a subject of some trouble and anxiety. When I joined the district they underwent little labor and had much freedom; they wore jewels and what clothes they pleased; and were shut up in their wards neither day nor night. One had a parrot, another a shamah! But with the assistance of silence and solitary confinement, as the punishment of misconduct, and the adoption of a colored costume, I have subdued in some degree a system of insubordination; and with the exception of stealing ottah, which they are constantly discovered in concealing about every part of their persons, I have few offences among them which require punishment."—

Extract from report of Mr. T. P. Woodcock, Magistrate of Allahabad, circulated by Bengal Govt. March 1st, 1846.

officer of the jail guard, are to be held responsible for the due observance of such rules, or for the immediate report of any breach of them to the magistrate. Jail rules, sect. 9, para. 4.

Rules prescribed by magistrate to be translated and hung up in the jail.

2603. All orders and regulations relating to the interior economy of the jails, the duties of the jailor, his officers, and the military guard, are to be translated into the native languages, and copies made of the same, and hung up on a board, in a conspicuous part of the jail, in the jailor's apartment, and in the guard-room, for general information. Jail rules, sect. 9, para. 30.

Jailor not to delegate his duties without order.

2604. In the absence of the jailor, the magistrate may authorize his naib to perform the duties of that officer; but without the authority of the magistrate the jailor is not to delegate his personal duties to his naib, or to any other person. Jail rules, sect. 9, para. 17.

Weekly inspection of prisoners by the jailor and native doctor.

2605. On Sunday morning the burkundazes will all attend as usual, and be mustered, when the darogah will examine every prisoner, and certify in a book to the following points :—1, that the irons of every prisoner are secure and clean; if not that they have been made so;—2, that every working prisoner in irons has a pair of leather gaiters;—3, that he has his numerical ticket;—4, and his authorized quota of working utensils, clothing, and bedding; and that they are clean and in good order;—5, that his head and face have been shaved. The native doctor is to report that he has examined every prisoner, and has withdrawn every one sick, weak, or wounded with irons, or affected with scurvy, for the purpose of admission into hospital, or placed them in the infirm gang, as the civil surgeon may deem expedient. A list of prisoners who have transgressed the rules, or have been so removed by the native doctor, is to be presented on Monday morning to the magistrate and civil surgeon for orders. C. O. Insp. Prisons, *W. P.* No. 5, July 1, 1847.

Daily reports to be furnished by jailor and native doctor.

2606. The jailor and native doctor are to furnish the magistrate on the opening of the court with daily reports in English (filled up by an English writer from similar statements kept in the vernacular by those officers) of the prisoners in jail and in the hospital in annexed forms (*a* and *b*), with any modifications that may be suggested by experience. C. O. No. 134 of vol. 1.

(a) *Daily report of prisoners in the jail of zillah* , for the month of .

NIZAMUT ADAWLUT.					SESSIONS COURT.				MAGISTRATE.						Total.
Date.	Perpetual imprisonment.	Ditto temporary.	Security required.	Referred.	Temporary imprisonment.	Security required.	Mad.	Post-poned.	Temporary imprisonment.	Security required.	Mad.	Committed.	To be tried.	De-wanny prisoners.	

(b) *Daily hospital report for the month of*

Date. Patients brought in. Total. Died. Discharged. Remaining.

2607. All orders for receiving prisoners into the jail, and for their final discharge, are to be signed by the magistrate or his assistant, and addressed to the jailor. Jail rules, sect. 9, para. 6. Orders for ing and discharging prisoners.

2608. The prisoners, on their being lodged in the wards in the evening, and on their being taken out in the morning, are to be counted over by the jailor or his deputy. Jail rules, sect. 9, para. 7. Prisoners to be counted periodically.

2609. At the time of locking up the prisoners, the working tools used by them are to be carefully collected and counted, and then deposited during the night in a place of safety without the jail. Sufficient search is also to be made, to prevent the concealment of any weapon or implement about the persons of the prisoners or in the jail, whereby the prisoners might injure one another, or be enabled to effect their escape. Jail rules, sect. 9, para. 8. Tools to be collected at night, and search to be made for weapons.

2610. The jailor every morning and evening, at the opening and shutting up of the jail, is to visit personally every part of the jail, and carefully to inspect the windows, walls, doors, and gratings, in order to discover any attempt to cut the iron bars, or to undermine the walls of the jail. Jail rules, sect. 9, para. 9. Jailor to visit every part of the jail, morning and evening.

2611. After the prisoners are locked up for the night, the keys of the wards are to be lodged with the jailor, if present; or if absent, with his deputy. Jail rules, sect. 9, para. 16. Keys of the wards.

2612. In jails with a chappa roof if a light is necessary, it should be placed under the immediate inspection of the sentry; and magistrates should use all practicable precautions, consistent with the health and reasonable comforts of the prisoners under their charge, to prevent the occurrence of fires. C. O. No. 258 of vol. 1. Precautions against fire.

2613. The practice of chaining prisoners at night to a massive iron chain is both objectionable and unnecessary in regularly built jails, and is to be discontinued in all such jails. C. O. Govt. *Bengal*, No. 494, Feb. 26, 1852. Practice of chaining prisoners to a fixed chain prohibited.

2614. The practice of keeping the batten doors and shutters of the wards closed at night is a cruel and useless precaution against escape, whenever the doors and windows are secured with iron grating; and it is therefore prohibited. The prisoners should always have the means of opening or closing the shutters at will, and the latter should be pierced with open work in the upper planking, so as to admit fresh air into the wards, when the shutters are closed, during cold or rainy weather. C. O. Govt. *Bengal*, No. 556, February 25, 1846. Ventilation of wards at night.

2615. As far as it is practicable, and consistent with safe custody, the close confinement of prisoners in their wards at night is to be restricted to those whose cases are under reference to the court of nizamat adawlut; to convicts under sentence of perpetual imprisonment; and to other persons of notorious bad character. A discretion may further be exercised by the magistrate, in the confinement of prisoners whose trials are under reference to the nizamat adawlut, by exempting from the above restriction any prisoners whose close confinement may not appear necessary for their safe custody. C. O. No. 205 of vol. 1. Certain prisoners need not be confined to the wards at night.

2616. In all such cases the magistrate is to adopt such precautions as are necessary for ensuring the primary object of the safe custody of the prisoners. C. O. No. 145 of vol. 1. Precaution to be used in such cases

2617. A question having arisen as to whether the sepoys of government employed on duty at the jails should be required to guard the prisoners when taken out to ease themselves, certain

the honorable the vice-president in council was pleased to determine, that the sepoys of the regular battalions should be exempted from the duty above mentioned. C. O. No. 69 of vol. 1.

nd prison-
to be al-
lowed the use of
private dwellings.

2618. No buildings are to be erected within the walls or boundaries of a jail, but such as are authorized by government. No prisoner is to be allowed to possess, or have access to, any private dwelling in the vicinity of the jail; nor are the families of any one of the prisoners to be permitted to erect dwellings nearer to the jail than the magistrate may judge proper. Jail rules, sect. 9, para. 18.

Friends of pri-
soners not to be
admitted.

2619. The wives and other female connections of the prisoners are not to be permitted to enter the jail. Jail rules, sect. 9, para. 20.

for the
disposal of the chil-
dren of convict
mothers.

2620. *Rule 1.* In all cases of female convicts who may, at the time of their conviction, have children at the breast, or to whom children may be born whilst in confinement, such children need not be separated from their mothers until they have attained the full age of two years. When a child arrives at two years of age, it must, at once, be removed from the jail. *Rule 2.* No child which has attained the age of two years at the time of conviction of the mother, is, on any consideration, to be permitted to become an inmate of the jail. *Rule 3.* In all the cases above mentioned, the magistrate must cause diligent enquiry to be instituted regarding the relatives and near connections of the convicts, in order that the children may be made over to them during the incarceration of the mother. *Rule 4.* Should the relations of the children be entirely destitute, and unable to support them, or should the magistrate fail to discover any persons sufficiently near of kin to take charge of them, he will select trustworthy persons to whom he will consign them, and see that they are brought up to habits of industry and labour. C. O. Insp. Jails, *L. P.* No. 53, October 2, 1856.

Prisoners not to
keep shops.

2621. No prisoner is to be allowed to keep a shop in the jail, or its vicinity. Jail rules, sect. 9, para. 19.

to
examine weights.

2622. The moodies who supply the convicts with food, are to execute an engagement, binding themselves to the performance of such conditions, as the magistrate may consider proper, to prevent frauds and abuses. A copy of this engagement is to be fixed up in the guard-room, and in a conspicuous part of the jail; and the jailor is to see that these conditions are punctually fulfilled, or report to the magistrate any departure from them. The scales, weights, and measures used for articles supplied to the prisoners, are to be regularly inspected by the magistrate, at least once in every quarter, and as much oftener as he may judge proper. Jail rules, sect. 9, para. 21.

Guards for moo-
dies.

2623. A sufficient guard is to be stationed with the moodies at the time of their supplying articles for the prisoners, for the protection of their property. Jail rules, sect. 9, para. 22.

Intoxicating liquors and drugs are expressly prohibited by the circular orders of the nizamat adawlut, under date the 23rd of April 1805, from being admitted into the jail; and the officers of the jail are to be careful to enforce a strict observance of this prohibition. Jail rules, sect. 9, para. 23.

2625. The prisoners are not to be permitted to give any money, or to give, sell, or exchange any property whatever to any person attached to the jail, or any public officer of whatever denomination. Jail rules, sect. 9, para. 24.

2626. In all cases of suicide among the prisoners in the jail, an inquest is to be held on the body, and an inquiry made into the circumstances of the case, with the view of ascertaining what cause may have led to the commission of the act; and the result of such inquiry is to be regularly reported to the [inspector]. C. O. No. 157 of vol. 1.

Prisoners com-
suicide.

2627. A register is to be kept of the wards of the jail, in the form annexed, showing the cubic contents of each, and the number of prisoners daily under confinement. It must be carefully kept up, and should be inspected daily by the magistrate.

Register of

Lock up register.

Date.	Containing each night.	No. of ward.	CIVIL AND CRIMINAL JAIL.												CELLS.	HOSPITAL.			TOTAL.			Total under confinement.	No. of prisoners secured in stocks and chains at night.																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																		
			Prisoners with labor and irons.	Ditto ditto.	Ditto ditto.	Ditto ditto.	Prisoners under examination.	Civil and revenue prisoners.	Prisoners without labor.	Female prisoners.	Prisoners for life.	Ditto ditto.					Male.	Female.	Within the walls of the jail.	In out gangs.	In nazir's guard.																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																				
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C. O. Insp. Prisons, W. P. No. 5, July 1, 1847.

2028. The magistrate is authorized and enjoined, whenever the number of prisoners is greater than can be conveniently accommodated in the proper jail, to hire without previous application to government any suitable buildings which may be procurable, or to accommo-
date a portion of the prisoners in tents or boats, or to incur such expense as may be necessary to provide in any other manner for the temporary shelter and safe custody of the prisoners. On such occasions, the magistrate is forthwith to report the arrangements he adopts for the information of government, explaining at the same time the cause of any sudden augmen-
tation in the number of prisoners which has rendered such temporary arrangement necessary. C. O. No. 285 of vol. 1.

Over-crowd-
ed jail.
Magistrates how
to proceed in such
case.

2629. Serious consequences have, in some instances, been experienced from a want of proper attention, on the part of the magistrate, to the crowded state of the jails. A ma-
case.

gistrate cannot be justified in crowding together a greater number of prisoners than the place of confinement will conveniently hold. His duty, in regard to prisoners in his charge, is to detain them in custody according to law ; and every pain he inflicts on those persons, beyond that which is required by law, is illegal punishment. C. O. Nos. 114 and 165 of vol. 1 ; and No. 68 of vol. 2.

Session judge
may authorize con-
struction of kutchas
buildings.

2630. In such case the session judge is at liberty to authorize the construction of kutchas buildings for the custody of the surplus prisoners ; but those only, whose terms of imprisonment do not exceed six months, should be confined in such temporary buildings. A report is to be made to government on every such occasion. C. O. No. 74 of vol. 3.

Outlying gangs.

Rules for the use
of pals by, and
precautions against
fire.

2631. All prisoners removed from jail for the purpose of being employed upon any public work at a distance, which renders their return to the jail at night impracticable, are to be provided with tents or pals made of tat-puttee, unless a building of less inflammable materials can be procured. The number of prisoners in each pal is never to exceed 20. The size of the pals should not be less than 20 feet by 12. The pals are invariably to be pitched parallel to each other at a distance of not less than 4 yards apart, and not in a continuous line. The belchain, which is passed through the rings of the prisoners' fetters, must be of sufficient length to admit of its being continued beyond the pal at each end, so that the padlock, by which it is secured, may be accessible to the guard even though the tent should be on fire. The ridgepole should be supported upon two poles inclined to each other, in lieu of a single upright pole, in order that the whole of the prisoners might leave the tent in a body, without being disconnected with each other, in case of fire. Every pal is to be provided with a lantern, which is on no account to be opened within the tent. The expense is to be defrayed by the local committees, and charged against the work on which the prisoners are employed. C. O. Insp. Prisons, *W. P.* No. 35, April 6, 1853.

Medical inspec-
tion of.

2632. Every outlying gang should be visited by the civil surgeon once a month, or by the native doctor once a week, or brought into the station for inspection on the last day of every month. No prisoner should be detained in the hospital of an outlying gang for more than 48 hours. C. O. Insp. Prisons, *W. P.* No. 5, July 1, 1847.

Prisoners sleep-
ing without the jail
how to be secured ;
precautions against
fire.

2633. Every evening at sun-set, the whole of the convicts on the roads, without distinction, are to be secured with a chain passed through the ring of their fetters, and fastened on the outside of the hut or tent with a padlock ; but more than ten, or at the utmost twenty convicts are not to be secured with the same chain. The chain is to be made light, and put through the fetters whilst the prisoners are standing, in such a manner as not to prevent their moving together with facility on an alarm of fire. The hut or tent in which the prisoners are confined at night should also have a convenient number of doors for their speedy removal in the event of fire ; and every precaution should be taken to prevent so serious an accident, especially by using lanterns to inclose any lamps that are kept burning or occasionally lighted during the night. The sentries at each relief are to examine the state of locks and chains, and ascertain that they are not filed or loosened. Jail rules, sect. 9, paras. 33, and 34. C. O. No. 183 of vol. 1.

2634. Separate apartments in the jails are to be allotted for the following descriptions of prisoners* : —

Prisoners under sentence of death.

Prisoners sentenced to confinement by the sessions court or the nizamat adawlut [or by magistrate for heinous offences].

Prisoners committed to take their trial before the sessions court.

Prisoners sentenced to confinement by the magistrate for petty crimes or misdemeanors cognizable by him [i. e. under the powers first conferred on magistrates in this regulation].

And as the crimes proved or alleged against the second or third description of prisoners must be of different degrees of atrocity, the magistrates are required to separate those found guilty or accused of heinous crimes from those convicted of or charged with crimes of less magnitude. They are likewise to separate the male from female prisoners, so as to prevent their having any communication with each other; and the rules for keeping apart the several descriptions of the former are applicable also to the latter. The magistrates are further enjoined to endeavour to prevent drunkenness, gaming, and other immoralities, being practised in the jail. *Beng. Reg. IX. 1793, sect. 21. Ced. Prov. Reg. VI. 1803, sect. 21.*

2635. A similar distinction should be observed in the employment on the public roads, or other public works, of prisoners sentenced by the magistrate and of those sentenced by the courts of session. C. O. No. 45 of vol. 1.

2636. The different wards of the jail are to be appropriated, as far as may be practicable, to the particular descriptions of prisoners who are required to be kept separate under the above rules. The different classes of prisoners are on no account to be permitted any intercourse: and the magistrates are required to be particularly careful that persons in confinement for examination be never imprisoned in the same ward with prisoners under sentences of punishment. Jail rules, sect. 9, para. 15.

2637. All prisoners detained in custody for security only, more especially such as are not confined as notorious robbers or on suspicion of robbery, are to be kept, as far as possible, distinct from prisoners convicted of specific offences. C. O. No. 116 of vol. 1.

2638. All prisoners exempted, or declared entitled to exemption from labor on payment of a fine, under cl. 1, sect. 3, Reg. II. 1834, are to be kept separate, as far as practicable, both in and out of the jail, from convicts under sentence of labor in irons; and magistrates, and superintendents of prisoners, and their subordinate officers, are to be careful to prevent all communication between the two classes. Reg. II. 1834, sect. 3, cl. 2.

2639. The object of classification is to keep together, as much as possible, convicts who have been guilty of the more degrading and disgraceful crimes, as distinguished from those whose offences involve a less degree of moral turpitude, or imply no criminal habit, or deliberate indulgence of malignant passions. These two leading classes are to be again subdivided, to the extent attainable, first, into those whose term of imprisonment exceeds

Classification of prisoners.

How to be classified in jail;

* See page 475.

and at work.

No intercourse to be permitted.

Security prisoners to be kept distinct from convicted.

Rules for cation in W. P.

or falls short of a year, and secondly, into the separation of the criminals according to the greater or less enormity of their crimes. The subjoined list points out the mode in which these principles may be applied, wherever practicable.

Class I. Subdivision 1. Dacoity; highway robbery; burglary; theft with violence or other aggravating circumstances; theft of children. **Subdivision 2.** Cattle theft; simple theft; receiving stolen goods, except where the parties are notoriously connected with robbers or thieves, in which case they would be placed in subdivision 1; bad livelihood. **Subdivision 3.** Forgery; perjury; breach of trust; rape; adultery. **Sub-division 4.** Malicious maiming, or injury; brutal or aggravated assaults, as in the case of a husband ill-treating his wife upon slight provocation.

Class II. Sub-division 5. Culpable homicide; affray with homicide; simple affray; aggravated assault; and generally all grave offences against the peace or person arising out of some fancied point of honor, or prompted by feelings of anger without premeditated malice, such as would require their being ranked with sub-division 4.

Classification is to be regulated on the principle shown in this list; but the magistrate may modify it in special cases, as *e. g.* where persons of notorious bad character are confined for petty offences, and *vice versa*, recording reasons. Outlying gangs must consist of prisoners sentenced to short periods only, and each gang must be composed of prisoners permitted to associate under these rules. C. O. Insp. Prisons, *W. P.* No. 41, February 4, 1854.

Particular attention to be paid to these rules.

2640. The magistrate must at all times pay particular attention to the important object of separating the prisoners as directed above, and the session judge should see that it is observed. C. O. No. 98 of vol. 1.

Cleanliness.
Jail buildings.

2641. The jail should be erected on a high and dry site, the floor to be well raised from the ground, with flues underneath, to keep the wards dry; and the walls of the wards should be lofty. Ventilation is a point of such vital importance, that every measure which can be adopted should be carried into effect; for, in proportion to the purity and airiness of the wards, will be the health of the convicts. There should therefore be ventilators in the upper part of the wall, and spacious iron-barred openings on the ground floors, with an unconfined area on the outside. The privies should be exterior to the walls of the wards; and a corridor or passage should lead from the ward to the privy, with a wooden door at the entrance; and in the side walls of the privy should be open spaces secured with strong iron bars. A quantity of lime should be daily allowed for their purification.(a) C. O. No. 145 of vol. 3.

Objects to be specially attended to, to keep jails healthy.

2642. Magistrates are at all times to see that accumulations of filth, rubbish, and rank vegetation are at once removed from the jail by convict labour; and that stagnant tanks, jheels, ditches, and garbage in the vicinity of the jail are cleansed or removed. The utmost attention is enjoined to the ventilation of the wards, the state of the privies, the avoidance of over-crowding at night, the cleanliness of the clothes and persons of the prisoners,

(a) C. O. Govt. Bengal, No. 1780, September 24, 1851, recommends the use of cook-room charcoal in cleaning jail privies and drains.

their food and drink, the hours at which their meals are taken, and the nature and amount of the work performed by them. In the event of the actual outbreak of cholera, the prisoners should be at once removed to pails, and encamped in the most healthy spot that can be selected, with reference to their safe custody. All wheels, stagnant pools, and collections of decayed animal or vegetable matters, should not only be avoided, but care should be taken that the camp is not placed on the lee-side of any such place. The most scrupulous care should be exercised in the sanitary arrangements of the camp, and its immediate vicinity. The ends of the tents facing the prevailing winds should be closed at night, and the prisoners should not be exposed to dews or exhalations of any kind, between sunset and sunrise. The walls of the jail-wards should be white-washed, and a portion of the prisoners removed into them as soon as the disease begins to yield. The darogah, and all guards on duty, should be warned to report immediately all cases of sickness that occur; and the prisoners themselves should be enjoined to make known any appearance of diarrhoea at once, as affording them the best chance of not falling victims to the disease. C. O. Insp. Jails *L. P.* No. 30, December 26, 1855.

Management
when cholera is
present.

2643. The military board have authorized the white-washing of jail-wards once in every quarter if necessary, and oftener on emergencies, on a written application to that effect being addressed by the officer in charge of the jail to the executive engineer of the division. The officers having charge of jails will therefore be held responsible for their being kept in pure and cleanly condition; and prisoners should be prevented as far as possible from defiling the walls. C. O. Nos. 167 and 170 of vol. 3. Jail rules, sect. 7, para. 1.

Wards to be
white-washed once
in every quarter, or
oftener. *L. P.*

2644. The floor of every ward, be it stone, brick, plaster, or mud, is to be "leaped" to the thickness of half an inch by the cooks of messes, or prisoners set apart for this duty once a week, a walk being left unleaped of two feet down the centre when the width of the ward is less than 16 feet, and a three feet walk when the ward is more than 16 feet wide. The walls of every hospital and ward should be first carefully scraped and then leaped with fine potter's clay once a week, to the height of six feet. No charge on account of white washing will be authorized without previous sanction. C. O. Insp. Prisons, *W. P.* No. 5, July 1, 1847.

Floors and walls
to be leaped once
a week. *W. P.*

White washing not
allowed *W. P.*

2645. As the most serious consequences may be experienced from want of due attention to cleanliness in the wards, the government will hold any magistrate highly reprehensible, who is inattentive to this important part of his public duty. C. O. No. 107 of vol. 1.

Officer in charge
to see that wards
are kept clean.

2646. The most advantageous plan for providing means of daily ablution to the prisoners, is that of a good sized tank in the immediate neighbourhood of the jail, but outside the walls. The practice of bathing within the walls in the well from which water is drawn for drinking is open to objection, on account both of its impairing the quality of the water for drinking, and of rendering the inside of the jail wet and dirty. A tank should be dug 120 feet square and 10 feet deep, which would be large enough for the purpose, and would retain water throughout the year. But whenever difficulties still remain for procuring the means of ablution for the prisoners in the vicinity of the jail, it is almost always practicable

Daily ablution of
prisoners.

to allow them these means during the interval from labor, which they enjoy in the middle of the day. C. O. No. 161 of vol. 3.

2647. As further connected with the health of the prisoners, the importance of providing means for their more frequent ablutions and greater personal cleanliness is worthy of notice, as exemplified in the salutary effect produced on the health of the Cawnpore convicts from the permission given them to bathe in a tank adjacent to the prison. The attention of the magistrates is directed to this subject. C. O. No. 88 of vol. 3, para. 7.

2648. It is the particular duty of the jailor, and deputy jailor, and other officers of the jail, under such rules and orders as are prescribed by the magistrate, to prevent the water in the wells from being polluted. Jail rules, sect. 7, para. 3.

Clothes to be washed.

2649. The linen of the prisoners is to be regularly washed at stated periods. Jail rules, sect. 7, para. 2.

Repairs of buildings.

Inspector may sanction repairs and alterations not exceeding 500 rupees.

2650. Magistrates are competent to undertake all minor work, not requiring skilled labour, in the repairs and alterations of jail buildings, under the immediate sanction of the inspector of jails. Such work is to be executed by them, and not by or through the executive officer. The government has ruled [April 28, 1856] that it is not necessary that "the executive officer should be called on for estimates of any ordinary brick and mortar work, or white-washing, or carpenter's work, or earth-work, required in jails, when the cost of the work does not exceed rupees five hundred, as the magistrate ought to have sufficient information regarding local rates and prices to enable him to test an estimate prepared by the jail darogah, or any other of his subordinates." But a report is to be made to the inspector of jails, whenever skilled assistance is needed in any work of difficulty. Magistrates are also required to report to the executive officer of the division any material alteration in, or any addition to, the jail buildings, so as to give that officer an opportunity of inspecting the work while in progress. And on the completion of such work they are strictly required to report the same to the executive officer, in order that the necessary entry may be made in the books of the department of public works. C. O. Insp. Jails, *L. P.* No. 42, May 9, 1856 ; and No. 5, June 21, 1854.

Report to be made to executive officer.

When necessary in jails.

2651. In all cases of repairs, alterations, or improvements in jails, convict labour when available is to be preferred to free labour. In estimates submitted for works, a small column is always to be given, showing the cost of the work with free and with convict labour. When the employment of convicts is deemed impracticable, the magistrate is to state his reasons for so thinking at the foot of the estimate. C. O. Insp. Jails, *L. P.* No. 16, November 8, 1854.

Delays in works in progress in jails to be reported to inspector.

2652. Special reports of works in progress in jails are to be made to the inspector by magistrates, where there appears to be any unnecessary delay in carrying out the work entrusted to an executive officer. C. O. Insp. Jails, *L. P.* No. 13, September 2, 1854.

Charges.
Authority to incur.

2653. Officers in charge of jails are competent to incur charges for the following items without the previous sanction of the inspector :—

Clothing, half-yearly.

Blankets, annually.

White-washing, quarterly.
 Contingent guard over working prisoners.
 Prison rations and cooking pots.
 Hospital and extra diet.
 Ditto bazar medicines.
 Oil for jail.
 Iron and charcoal for making or mending tools and fetters.
 Baskets.
 Brooms.
 Ropes.
 Dhoona.
 Sajimati. { These articles are the only expense allowed for washing, which is to be
 Khâr. { done by the prisoners.
 Gumlahs for privies.
 Mats or tât-pât for bedding. { The former once in six months, or the latter once
 { in the year.
 Shaving expenses by contract. If there are no barbers among the prisoners.
 Leather mozahs.
 Funeral expenses.

All minor work, such as extra white-washing &c., is to be done by them under the sanction of the inspector, instead of through the executive engineer. In carrying out such works it is necessary only to engage a competent rajmistry, if there should not be one amongst the prisoners. No repairs or alterations, coloring, or painting, are to be done to jail buildings, by the officer in charge, or the executive engineer, without the previous sanction of the inspector. Propositions for additions and alterations to jail buildings are to be decided upon between the inspector and the local authorities on each jail being visited; and as he is required, if possible, to visit every jail at least once a year, there is no necessity for the magistrate to send in propositions for trifling additions at any other time. It is, however, to be distinctly understood that whenever such propositions for additions, alterations, petty repairs, &c., are sanctioned by the inspector during visitation or in writing, it will still be necessary for the officer in charge of the jail to submit an estimate for sanction in the annexed form.(a)

(a) *Estimate of the probable expense of making*
in the

Jail.

		With hired labor.			With Convict labor.		
	1 Wall 40 × 6 × 1½						
10,000	Bricks at 2 rupees per 1,000,	20	0	0	16	0	0
20 Mds.	Chunam at 50 rupees per 100 maunds,	10	0	0	6	0	0
10 "	Soorkie at 12 rupees per 100 maunds,	1	0	0	0	12	0
100	Coolies at 2 annas each } in case convicts are available, {	12	8	0	0	0	0
10	Mistries at 8 annas each } in case convicts are not avail- {	5	0	0	0	0	0
100	Coolies at 2 annas each } able, {	0	0	0	12	8	0
10	Mistries at 8 annas each }	0	0	0	5	0	0
Total,...							

N. B.—The labor of prisoners must not be charged for; and in case of materials being supplied from the manufacturing department care should be taken that the sum charged for them is exactly that at which they in the bazar. When the labor of prisoners is not available that fact should be noted at the foot of the estimate.

It must be remembered that prison labor is to be employed in all cases when practicable. When works, undertaken under sanction obtained as above indicated, have been completed, a bill is to be submitted to the inspector for audit. The civil auditor and accountant will not pass accounts without such audit. C. O. Insp. Jails, *L. P.* No. 41, April 30, 1856; No. 8, July 26, 1854; and No. 14, September 9, 1854.

Sanction of government, if requisite, must be obtained before hand.

2654. If the proposed charge should be greater than the inspector is authorized to pass, the sanction of government must be obtained before the charge is incurred. C. O. Insp. Prisons, *W. P.* No. 19, January, 1849.

SECTION III.

OF MEDICAL MANAGEMENT AND HOSPITAL.

Civil inspect report.

2655. The civil surgeon is to inspect once a week, at uncertain intervals by day or night, all the jail wards, cells, and yards, grain, and food; informing himself of the number of occupants of each ward or cell; and is to report on the reverse of the monthly casualty statement to the following effect:—

No. and date of Civil Surgeon's inspection of jail wards and prisoners.		General health of the prisoners.	Quality and quantity of the food supplied.	State of the jail with regard to cleanliness, crowding, and ventilation.
Date of inspection.		No. of prisoners.		
		Inspected.	Withdrawn.	

appending such remarks as he may deem necessary; removing such prisoners as may require his aid to the hospital or infirm gang; and immediately calling the attention of the magistrate, either by letter or in the order book of the jail, to any irregularity that may have come directly or indirectly to his notice. C. O. Insp. Prisons *W. P.* No. 5, July, 1847.

Duties of the medical officer.

Duties on appointment.

2656. *Rule 1.* The duty of the medical officer in charge of a jail embraces the consideration of every matter connected with the health of the prisoners, their treatment in hospital when sick, the regulation of their diet, clothing, work, and punishments, so far as they are concerned in the maintenance of their health; and in general every thing connected with the hygiene of the jail and its inmates. In all these matters he acts in immediate subordination to the magistrate or other officer in charge of the jail. *Rule 2.* The medical

officer, on being appointed, is to make himself thoroughly acquainted with the regulations of the prison to which he is attached, and its various details. *Rule 3.* He is to visit every part of the prison once at least in every week, and oftener in times of great sickness, or when epidemic disease exists in the district or station; and is to enter in his journal the result of such inspection, recording any want of cleanliness, drainage, warmth, or ventilation, any bad quality of the provisions, any insufficiency of clothing or bedding, or any other cause which may effect the health of the prisoners. He is to ascertain that the water is pure and wholesome, and that there is an abundant supply for drinking, cooking, and washing. He is especially to note all defects of drains, privies, and the conservancy arrangements generally of the jail. He is twice each week to see every prisoner whether criminal, civil, or awaiting trial. The result of all his examinations is always to be recorded in an easy form for reference and inspection. *Rule 4.* He is to keep a journal in which he will enter the date of every visit with any observations connected with the performance of his duty. This journal is to be kept in the jail for the information of the magistrate and the inspector of jails. After each visit of the surgeon it is to be sent to the magistrate for the immediate issue of such orders as that officer may find it necessary to pass. *Rule 5.* The surgeon is personally to examine every prisoner on the day of his arrival at the jail, or at latest on the following morning. He is to record in a special register in the printed form appended, the name, age, state of health on admission, weight, and any disease of importance to which he may have been subject, of every prisoner. He is likewise to indicate his opinion as to the class of labor, on which the prisoner may be employed with special reference to his state of health on admission. He is also to record the prisoner's state of health and his weight on discharge; or, in the event of his death, to state the date of his decease, and the disease of which he died, with the number in the record of fatal cases, in which detailed particulars regarding his death may be found. The number of every prisoner in this register is to correspond with his jail number; so as, in the case of all fatal cases, to render it easy to trace the history, crime, and all particulars connected with the deceased, which it may become necessary to know, or refer to, for statistical or other purposes. *Rule 6.* The civil surgeon is at all seasons of the year, as soon after sun-rise as possible, to see all the prisoners who are sick or in hospital. He is also to examine all prisoners who complain of illness; admit those who require it to hospital; and, in the case of those who merely need the application of simple dressings, as in abrasions from fetters or other external treatment, such as does not render it necessary to send them to hospital, to enter in a special out-patient register such variation of the diet or work of the out-patient prisoners as he may consider it necessary to recommend. These recommendations are to be carried into immediate effect by the jail darogah, the register being daily submitted to the magistrate for his information and orders. When great sickness prevails, or the severity of cases actually under treatment requires it, the surgeon is to visit the jail as many times daily as may be necessary for the due and efficient performance of his duties. *Rule 7.* He is daily to visit the prisoners in separate, or solitary confinement. *Rule 8.* He is to keep a regular hospital case book, in which is to be entered day by day an account of the state of every sick prisoner, the name of his disease, and description of the medicines and diet and any other treatment which he may order for such prisoner. It is not necessary to

Visits to the jail.

Journal

To examine every

Daily to visit the
and the

Daily to

To
record
sick

keep detailed records of trifling cases ; but the leading particulars connected with all severe and fatal examples of disease should invariably be recorded. *Rule 9.* An abstract register of disease, in which shall be entered, 1, the name ; 2, age ; 3, caste or religion ; 4, profession or occupation ; 5, pergunnah and zillah ; 6, crime ; 7, sentence ; 8, date of confinement ; 9, date of decease ; 10, work on which employed at the time of last illness, whether out-door, in-door, or as jail-servant ; or, if non-laboring, whether civil, criminal, or in hajut ; 11, disease, with a brief abstract of its leading characters ; 12, treatment, also in brief abstract ; 13, post mortem examination, which must be made in every case ; 14, remarks by medical officer, should he deem it necessary to offer any on the general or particular characters, causes, or other circumstances connected with the particular case, or class of cases in the event of their being due to epidemic causes. The headings from 1 to 10 inclusive should be filled in by the jail mohurir, from the prison-register ; and the remainder supplied by the medical officer himself. When severe epidemics prevail, and the fatal cases are so numerous as to render it impracticable to keep detailed records, a few typical and well-marked cases should be selected by the medical officer for record and post mortem examination, in order that the general and specific characters of the visitation may be known and recorded. A copy of this register is to be sent every month to the inspector of jails, with a transmitting letter containing any remarks the medical officer may wish to offer. The number of each case in this register is to be recorded in the appropriate column of the general admission register of the jail as required by rule 5. *Rule 10.* He is to keep a special record of all cases of cholera, whether sporadic or epidemic, according to the form of register supplied. A copy of this is, at the end of every month, to be transmitted to the inspector of jails. *Rule 11.* His attention is to be directed to the scale of diet on which each prisoner is placed, and he has a discretionary power to recommend the increase, diminution, or change of the food, when required by the constitution and the state of health of any particular prisoner. He has the same discretionary power with reference to the diet of prisoners in the extremes of youth and old age. It is a rule that diet is not to be made an instrument of punishment, such as can tend to the injury of health ; but this is not to prevent the magistrate from putting a refractory prisoner on reduced allowance, or a coarser kind of diet, where the civil surgeon does not object to it. The civil surgeon is daily at his morning visit to examine the food provided for the prisoners in order to see that it is of proper quality and properly cooked. *Rule 12.* He is to give directions in writing for separating prisoners having infectious complaints, or being suspected thereof ; for cleansing, disinfecting, and whitewashing any wards or cells occupied by such prisoners ; and for washing, disinfecting, or destroying, any infected apparel or bedding. *Rule 13.* He is to examine every prisoner about to be removed to any other place of confinement, and report as to his being free from malignant, contagious, infectious, or other disqualifying distemper, and in a fit state to be removed. *Rule 14.* No prisoner is to be discharged from prison if laboring under any acute or dangerous disease ; nor until, in the opinion of the medical officer, such discharge be safe, unless such prisoner shall require to be discharged. *Rule 15.* No prisoner is to undergo corporal punishment, except in cases of great emergency, until he is examined by the surgeon and certified by him to be in a fit state to

Special record of
fatal cases.

Special cholera
register.

May increase,
diminish, or change
diet in particular
cases.

To give direc-
tions in case of in-
fection.

To examine pri-
soners previous to
removal.

Sick prisoners
when to be dis-
charged.

Sanction of sur-
geon
or
ment.

receive such punishment. *Rule 16.* Within one week after the termination of each month, the civil surgeon is to submit to the magistrate, for his countersignature and remarks and immediate transmission to the inspector of jails, a complete monthly return of the sickness and mortality in the jail under his charge. Magistrates are required to report every instance, in which this rule is not strictly complied with. These returns are to be drawn up in the form now required for the annual report submitted to the medical board (which will be forwarded as usual to that authority, through the prescribed channel), and are to embrace every circumstance of interest or importance connected with the jail during the month. The annual return is to be an abstract of the monthly reports. A fair copy of all such reports is to form part of the regular records of the jail. *Rule 17.* The annual returns of sickness and mortality in jails will be printed by the inspector of jails and appended to his general report. C. O. Insp. Jails, *L. P.* No. 59, January 6, 1857.

Periodical re- turns of sickness and mortality.

2657. With reference to the above rules for the medical management of jails, the following forms are required to be kept, with a view to secure uniformity and accuracy with the least possible trouble to medical officers. *Number 1(a)* is the surgeon's special register of persons on admission and discharge. This requires little explanation; yet it is an important record, as by it alone can be determined the extent to which the jails are responsible for deterioration of health, and mortality among prisoners. There can be no doubt that many prisoners, and particularly those who are convicted in times of want and famine, whose crimes are the result of poverty and starvation, or who are drunken, depraved, or addicted to narcotics, take into the jail the seeds of the diseases to which they rapidly fall victims in confinement. For this the prison is in very many instances only partially responsible, and in some not responsible at all. At present such cases are entirely unaccounted for in the returns. The register of the weight of a convict on admission and discharge is important in regard to the sufficiency or otherwise of the prison dietary, and to the influence of labour, solitary confinement, and other points connected with prison discipline upon the general health of prisoners, respecting all of which, up to the present time, the jail records of the lower provinces furnish no information whatever. The previous diseases of a prisoner can in general only be imperfectly ascertained from natives, yet a knowledge of them is not without interest in determining the most judicious and humane means of disposing of them in captivity. It is also of importance in ascertaining the causes of the tendency of particular classes of convicts

Annual returns
be printed by
the inspector of
jails.

Surgeon's register of prisoners on admission and discharge.

(a) *Surgeon's register of prisoners on admission to* *and discharge from the jail of*

[illegible]

to scurvy, tuberculous cachexia, and the intractable forms of jail dysentery and diarrhoea, regarding which our knowledge is at present imperfect and defective. For the present, and until a sufficient number of properly constructed weighing machines can be furnished, in those jails not already provided with them the weighing of convicts may be omitted. *Number 2(b)* is the mortality statement of the jail. Its advantages and necessity are so obvious, as to need no further mention. The briefest outline of the course and symptoms of the disease, of the general indications of treatment, and of the *post mortem* appearances, is all that is required. The first ten heads of information can be filled up in the jail by the mohurir; the remainder will not occupy much of the time of the surgeon. For facility of transmission and record, this return will be best kept on loose sheets, which can afterwards be stitched together in the jail records. *Numbers 3(c)* and

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No.	Name.	Age.	Caste or Religion.	Profession or occupation prior to imprisonment.	Pergunnah and Zillah.	Crime.	Sentence.	Date of Confinement.	Date of Decease.	Work in which employed at time of death.	Disease, with brief abstract of case.	Abstract of treatment.	Post mortem examination.	Remarks.
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No.	Sex and Age.	Zillah.	Sentence; laboring or non-laboring.	Symptoms and course of disease.	Treatment.	Results.	Remarks.
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[illegible]

are the cholera registers, the former of all cases that occur, the latter of the result of fatal cases only. Cholera is so frequent a scourge of the jails in the lower provinces, and there are still so many disputed points in its pathology, as to render it desirable to collect accurate and trustworthy records, especially in public institutions, where the means of carefully observing the whole progress and characters of the disease exist. The following extracts from the circular issued by the board of health in London during the epidemic of 1854, will show the direction in which enquiry should be made, and the points on which further information is required:—

Cholera registers.

1. “ *Through what channel* does the exterior cause or poison of cholera first enter or affect the human body? is it through the lungs? or through the stomach and intestines? or otherwise?

Directions for enquiry in cases of cholera, and points on which information is required.

2. Has the disease a *period of incubation*? if so, how long? and on what is it contingent?

3. Is there conclusive evidence, affirmative or negative, as to *communication of the disease from person to person*? Has any disproportionate liability to the disease been suffered by those in attendance on the sick, or by those engaged about their dead bodies, or occupied in cleansing their linen? Have cases of the disease occurred where personal infection was impossible? Have solitary cases arisen in large establishments, or been brought thither, without any diarrhoea or cholera ensuing among other inmates? Where choleraic disease has spread in an establishment, shortly after the arrival either of a choleraic patient or of some person from a choleraic locality, has the establishment previously been free from diarrhoea or fever, and unexceptionable in its sanitary arrangements?

4. Does any thing indicate a *communication of the disease by provisions* supplied from houses in which cholera exists?

5. Have persons engaged in *particular manufactures*, or other employments, appeared to enjoy any special exemption from the disease?

6. Has the disease been observed in apparent *dependance on particular articles of diet*? Has any immunity been enjoyed by persons deriving their water-supply from a different source to that generally supplying their district? Has it occurred to persons, who have drunk no other water than such as had previously been distilled, boiled, or filtered through charcoal?

7. Does cholera *begin as a morbid process of the gastro-intestinal mucous membrane*? or is this preceded by some state of general poisoning which requires the gastro-intestinal membrane to act as an emunctory? Is the state of collapse determined by this gastro-intestinal flux, and in proportion to it? or can it arise independently of any such flux? How are the lividity and the cramps determined and proportioned?

8. What conditions determine the occurrence, duration, and severity of *consecutive fever*? What are the varieties of morbid condition included under this term? To what extent does it depend on the previous occurrence of profuse discharges, or on the completeness of collapse? Does stupor in this stage always depend on uræmia, or on what? In what proportion of cases and under what pathological conditions, is the fever accompanied by exanthem?

9. When *diarrhoea and cholera* prevail together epidemically in a district, are they (with differences of degree) *the same disease*? Does the diarrhoea, if left to itself, generally and safely tend to spontaneous recovery? or do such cases, without medical treatment, frequently, in proportion to their numbers, pass into true cholera? Is there any way to discriminate a premonitory diarrhoea?

10. What changes, physical and chemical, are undergone by *the blood in cholera*? Does the consecutive fever represent, in regard to the blood, a period in which this fluid is tending to recover from injuries inflicted on its constitution during the stage of gastro-intestinal flux? Or is it attended by any process of change in the blood, leading to critical discharges or inflammations?

11. Does any *obstruction of the capillary circulation* in the malpighian tufts of the kidney, or in the lung or brain, or elsewhere, arise either from inspissation or other physical affection of the blood in cholera? Do any infiltrations or other parenchymatous changes, which have been observed in persons dead from cholera, arise in consequence of such obstructions? Or do all these structural lesions arise as ordinary inflammatory processes?

12. Does the *non-discharge of bile* with the rice-water secretions of cholera depend on tumefaction of the ductus choledochus, or on what?

13. Is the *rise of temperature* which has occasionally been observed *after death by cholera* confined to cases where death occurs during collapse? Does it occur only at the surface of the body, and, if so, depend on a return of blood to the surface? Or does it occur also in the visceral cavities of the body, and in the substance of solid organs?

Example.

In the mortality register of cholera, No. 2, the following supposititious case will indicate the manner in which the record should be filled in:—

1. Case,..... 9
2. Sex and age, m. 25
3. Duration of severe symptoms, ... { d. h.
4. 10
4. Death in collapse or re-action. Re-action typhoid.
5. *Stomach*.—Distended with rice water fluid. Glands near pylorus much swollen.
6. *Small intestines*.—Increased vascularity towards ileum.
7. *Large intestines*.—Below the valve congestion, extravasation of blood, and superficial ulceration. Solitary glands enlarged.
- 8.—*Glands of small intestines*.—Solitary glands enlarged and ulcerated. Aggregate much enlarged, infiltrated, and whitish.
9. *Mesenteric glands*.—Much swollen, of a reddish gray colour.
10. *Spleen*.—Atrophied.
11. *Liver*.—Pale and anæmic.
12. *Gall bladder*.—Moderately distended with dark green ropy bile.
13. *Peritoneum*.—Healthy.
14. *Kidneys and urinary organs*.—Right kidney coarsely granulated; bladder empty and contracted.
15. *Female urinary organs*.—Blood and mucus in cavity of uterus; os uteri ulcerated; cyst in ovary.
16. *Heart and blood*—In pericardium, a little fluid: heart small and flabby: valves healthy. No staining or coagula.
17. *Lungs*.—No fluid in pleuræ, pneumonia of lower lobe on right side.
18. *Membranes*.—Veins on surface full, no fluid under arachnoid.
19. *Brain substance*.—Slightly congested.
20. *Ventricles*.—A small quantity of clear fluid.
21. *Remarks*.—Any peculiarities connected with the particular case which the medical officer may desire to place on record.

Instructions for
the record of cases.

In the general register of cases, No. 1, uniformity will best be secured, with the least trouble, and the results be susceptible of comparison with those obtained in Europe by observing the following instructions, which are likewise extracted from the report of the medical council of the general board of health, published in London in 1855. The extracts are re-produced in *extenso*, as the work in question is not generally accessible in India.

Instruction I. *The following degrees or stages of the disease* are generally recognized by the medical profession and whenever it is possible should be distinguished. The terms adopted to designate them are in common use. All the stages are not present in every case.

1. *Simple*.—Alvine discharges frequent and liquid, but fecal. Vomiting and cramps absent.
2. *Choleraic*.—Alvine discharges very copious, watery, still tinged with bile. Vomiting generally present, but not continued or urgent. Cramps of extremities absent.

Diarrhoea,

3. *Without Collapse*.—Alvine discharges watery, colourless, with white flakes (rice water) Vomiting commonly urgent. Cramps of extremities frequent and severe. Eyes somewhat sunken. Temperature of surface lowered. Pulse small and feeble. Urine not secreted.

Cholera, 4. *With Collapse.*—Surface of face and extremities quite cold, often wet. Face and hands much shrunken, and more or less deeply livid. Cramps present. Pulse at wrist absent or scarcely to be felt. Veins of extremities contracted to dark threads. Urine not secreted. Voice usually much altered and feeble.

5. *Consecutive Fever*.—Temperature of surface more or less restored. Pulse distinct, sometimes full and throbbing. Veins more or less filled. Face less shrunk, or even full and deeply flushed. Drowsiness passing into stupor. Alvine discharges again containing bile. Urine, in most cases, still suppressed.

Instruction II. *Absence of Stages.*—The absence of any one or more of the earlier stages should be indicated by the word "*absent*" or "*abs.*" written opposite the deficient stage in the place of the date of commencement. The fact of the disease not reaching the later stages will be sufficiently shown by the mode of termination of the case, ("*death*") or ("*recovery*") being written opposite the stage at which the disease ceased.

Instruction III. Dates.—When the time of commencement of a particular stage cannot be ascertained, the words “*not known*” or “*n. k.*” should be written in the place of the date. But although the precise hour of the commencement of each stage cannot be determined exactly, except in rare instances, it may generally be stated approximately by taking some intermediate time between a known period when the symptoms of the particular stage were entirely absent, and one in which they were clearly developed.

Instruction IV. Recovery.—The date of recovery should be fixed at the time when all the symptoms of the disease, and all marked disturbances of health directly resulting from it, have disappeared, although some degree of debility may remain.

Instruction V. *Treatment*.—The nature of the treatment should be indicated in the table as concisely as possible. When any uniform and definite plan of treatment is adopted in a series of cases, that plan should be accurately described in the space for "*Remarks*" and should be indicated on the table by one or two words, as "*Salines*" "*Calomel c. op*" "*Stimulants*" "*Sulph, Ac.*" &c.

Instruction VI.—If any patient at the time of the attack was already suffering from another disease, the nature of that disease and the treatment used for it should be mentioned in the "Remarks."

Number 5(e) is the monthly general return of sick in the jail hospital, and in all out-lying gangs, as well as lock-ups. This return is to be transmitted within one week of the close of each month, except in cases where the out-station lock-up is at a great

Monthly
return of sick in
hospital, outlying
gangs, and lock-

Monthly
return of sick in
hospital, outlying
gangs, and lock-

(e) *Monthly return of sick prisoners in the Jail Hospital at _____, under the charge of _____, with the sick of all out station lock-ups attached to the jail.*

Number of prisoners of all classes in custody on last day of preceding month,...								
Total number of admissions of prisoners of all classes during the month,								
Daily average strength of ditto ditto ditto,								
Ditto ditto of sick to strength,								
Average of deaths to strength,								
Average of deaths to treated,								

[illegible]

usual manner. Whenever the mortality is in excess of one per cent. of the whole strength, it is to be specially accounted for under the head of '*Medical History of the month*,'* which is likewise to include a brief account of any epidemics which may have visited the jail during that time, and any remarks or suggestions which the civil surgeon may desire to make re-

* At the close of the monthly return given below.

DISEASES.	Remained.	Admitted.	Total.	Discharged cured.	Transferred.	Liberated.	Died.	Remaining.	Total.	Remarks.
Brought forward,										
4.										
42 Laryngitis,										
43 Quinsey,										
44 Bronchitis,										
45 Pleurisy,										
46 Pneumonia,										
47 Hydrothorax,										
48 Asthma,										
49 Phthisis,										
50 Lungs, &c., diseases of										
5.										
51 Pericarditis,										
52 Aneurism,										
53 Heart, &c., diseases of... ..										
6.										
54 Teething,										
55 Gastritis,										
56 Enteritis,										
57 Peritonitis,										
58 Tabes mesenterica,										
59 Worms,										
60 Ascites,										
61 Ulceration,										
62 Hernia,										
63 Colic or Ileus,										
64 Intussusception,										
65 Stricture,										
66 Hæmatemesis,										
67 Stomach, &c., diseases of										
68 Pancreas, diseases of										
69 Hepatitis,										
70 Jaundice,										
71 Liver, diseases of										
72 Spleen, diseases of... ..										
7.										
73 Nephritis,										
74 Ischuria,										
75 Diabetes,										
76 Cystitis,										
77 Stone,										
78 Stricture,										
79 Kidneys, &c., diseases of										
8.										
80 Child-birth,										
81 Paramenia,										
82 Ovarian dropsy,										
83 Organs of generation, diseases of										
9.										
84 Arthritis,										
85 Rheumatism,										
86 Joints, &c., diseases of										

garding ventilation, draining, clothing, food, labour, over-crowding, and internal economy generally of the prison, so far as they concern, or come under his observation as affecting, the health of the prisoners. When epidemics prevail, a brief abstract of the results of the meteorological records kept during the month should also be appended to the return. The list of diseases is taken from the form of return adopted by the registrar general in England, and is promulgated in its complete form to get rid of the unsatisfactory and indefinite class of *other diseases*. Many of the affections mentioned are of rare occurrence in jails, and others may probably not occur at all;—in such cases the corresponding columns should be left entirely blank. It is hoped that care will be exercised in the accurate diagnosis of jail diseases. At present most examples of phthisis and fatal cases of wasting from tuberculous cachexia, are returned as diarrhoea, this being the most prominent symptom preceding dissolution. Again, the ulceration of the cornea which occurs in the advanced stage of general debility and wasting from innutrition, is seldom recorded in the proper place. The detailed calculations of the sickness and mortality of the year will be made in the office of the inspector of jails.—The only annual statement required from medical officers will be a brief narrative of the results of the year in all matters relative to jail hygiene. C. O. Insp. Jails, *L. P.* No. 63, March 20, 1857.

DISEASES.	Remained.	Admitted.	Total.	Discharged cured.	Transferred.	Liberated.	Died.	Remaining.	Total.	Remarks.
Brought forward, 10.										
87 Carbuncle,										
88 Phlegmon,										
89 Ulcer,										
90 Fistula,										
91 Skin, &c., diseases of										
92 Intemperance,										
93 Starvation,										
94 Violent deaths,										
CAUSES NOT SPECIFIED.										
95 Contusions,										
96 Wounds,										
97 Fractures,										
98 Dislocations,... ..										
99 Concussio cerebri,										
100 Burns and scalds,										
Total,										

N. B. The following are the chief points, on which information is required in this portion of the record. 1. Health of Prisoners. 2. Food and Clothing. 3. Cleanliness and ventilation. 4. Drainage. 5. Over-crowding. 6. Labour as affecting health. 7. Use of interdicted articles. 8. A detailed history of epidemics. 9. Causes of mortality above 1 per cent. of strength. 10. Any general remarks or recommendations the surgeon may wish to offer.

2658. To sum up briefly the written statements required from medical officers in connection with their professional duties in jails, they are as follows :—

List of written statements required from medical officers under the foregoing rules.

1. Brief notes in the jail visiting book of all inspections of prisoners' food, &c.
2. The register of the health and weight of prisoners on admission and discharge.
3. The hospital case book, in which only serious and fatal cases need be entered, and those not in great or cumbrous detail.
4. The casualty record.
5. The cholera registers.
6. The monthly return of sickness and mortality.
7. An annual narrative of the medical history of the jail during the year.

C. O. Insp. Jails, *L. P.* No. 63, March 20, 1857.

2659. In the event of any convict complaining of sores or sickness, he is to be sent to the hospital, and put on the sick list, if really indisposed. Jail rules, sect. 7, para. 7.

Sick prisoners to be sent to hospital.

2660. In the weekly inspection of the jail made by the surgeon of the station, he is to be careful to see that all prisoners who are actually sick, and require medical attendance, are removed immediately to the infirmary. Jail rules, sect. 7, para. 4.

Surgeon to see that they are removed.

2661. The native doctor is to reside in the vicinity of the jail. Jail rules, sect. 7, para. 5.

Native doctor.

2662. A sufficient number of charpoys, or beds, of the common construction, are to be provided for the accommodation of the sick confined in the infirmary. Jail rules, sect. 7, para. 6.

Beds to be provided for hospital.

2663. Whenever the surgeon or native doctor may judge it necessary to take off a prisoner's fetters, in consequence of sores or illness, information is to be given to the jailor, and the fetters are to be taken off in his presence. The jailor is also to report the circumstances of the case to the magistrate. Jail rules, sect. 7, para. 8.

Fetters may be taken off in hospital.

2664. The practice of admitting indiscriminately into the jail hospitals parties other than prisoners, and not connected with any foudaree case, is very objectionable, from the possibility of their introducing diseases of an infectious character into the jails, and it should therefore be discontinued at once. The charity hospital is the proper place for all such parties; and where there are establishments of this character, the magistrate is to see that no sick persons other than prisoners are admitted, on any account, into the jail hospital. The above remark has equal reference to wounded men; but there is no objection to their receiving out-door relief. However in cases of parties with severe wounds, insanes not accused of any offence, and parties sent in by the police for examination, where in-door treatment is essentially necessary, they may be received; but every caution must be taken to see that they are not suffering from infectious diseases, and they should be kept as separate and distinct as possible from the sick prisoners. The subsistence and other expenses incurred for parties thus admitted must be charged in the magistrate's contingent bill, and not included in the jail accounts, for they have no connection whatever with the jail. C. O. Insp. Jails, *L. P.* No. 18, November 21, 1855.

No other than prisoners admitted hospitals.

Exceptions to the above rule.

Expenses incurred for parties admitted under the above exceptions must not be included in the accounts.

Jail hospital to be separated from civil station charges for native medicines &c.

2665. The charges incurred on account of jail hospital contingencies are to be separated from the sums disbursed in the purchase of native medicines and other articles for the use of the civil station at large. It is desirable to ascertain the expenditure, which with proper economy will suffice for the maintenance of the jail, and this can only be done by excluding from the accounts all extraneous items of charge, and instituting at annual periods a comparison between receipts and disbursements. Magistrates are directed to be very careful to check any departures from this rule. Diet and native medicines for wounded men sent to hospital, are to be charged in separate bills, and not mixed up with the jail hospital accounts. C. O. Insp. Jails, *L. P.* No. 6, July 8, 1854.

Rules regarding hospital charges.

2666. The civil surgeon will be able to afford all information, so far as regards the expenditure on account of bazar medicines &c., from his own contingent bills; but it is necessary that a separate account should be kept of the expenditure of European medicines, &c., received from the Company's dispensary, in the same way as is done in all government charitable dispensaries; and a list, showing the actual quantity expended of each article during the foregoing year, is to be prepared and forwarded through the superintending surgeon to the medical board on the 1st of January, for the purpose of being priced by the apothecary to the East India Company. When received back from that officer, this list duly priced will be immediately returned to the superintending surgeon for transmission to the civil surgeon, who will embody it in the statement of hospital charges, which it will be his duty to furnish to the magistrate or other officer in charge of the jail. As great accuracy is necessary in the filling up of this column of hospital charges, civil surgeons are instructed to separate the actual expenditure of European medicines, &c., in the jail hospitals under their charge from that which takes place on other accounts, as the list required to be forwarded henceforth on the 1st of January of every year is to exhibit the actual expenditure on account of sick prisoners only. In preparing this list civil surgeons ought not to experience any difficulty, as the hospital diaries and other records of expenditure, which they are required to keep by the regulations of the service, must comprise the necessary data. C. O. Insp. Jails, *L. P.* No. 17, November 16, 1854.

And bazar medicines.

2667. Bazar medicines required for the sick in jails are to be supplied by the native doctor. The bill for these articles will be prepared in one of the native languages; and the European medical officer after hearing it read and making any retrenchments that may appear necessary is to write across the face of it, "passed for rupees annas pies," and is to attach his signature. The bill so passed is afterwards to be submitted to the revision of the magistrate by whom it will ultimately be paid if considered unobjectionable. Medical Code, chap. 5, para. 15. C. O. Insp. Jails, *L. P.* No. 17, November 16, 1854.

Convicts to be

2668. When endemic cholera breaks out in the jail, the whole or a portion of the convicts are to be removed to a healthy spot in the district; which was found very beneficial in one instance when its attacks were very fatal in the insane hospital at Moorshe-dabad. C. O. No. 320 of vol. 1; and No. 145 of vol. 3. See para. 2642.

sick in sub-divisions.

2669. Whenever convenient modes of transport are available, and it appears proper to forward prisoners at the head-quarters of sub-divisions to the sudder stations for medical

treatment in serious cases, the officers in charge are to make the necessary arrangements for carriage and escort. Prisoners whose sentences expire, whilst under treatment at the sudder hospitals, are to have the option of being immediately released or of remaining in hospital till cured.—Civil surgeons are to supply officers in charge of sub-divisions with cholera medicines and simple directions for using them. Resolution Govt. Bengal, May 20, 1846.

2670. The civil surgeons are required to transmit quarterly to the medical board statements of the sick and of casualties, for such instructions as that board may see fit to issue to them, or for such report to government as circumstances appear to require: magistrates are to give every assistance to the surgeons. C. O. No. 132 of vol. 1.

Quarterly report of surgeon to medical board.

2671. Magistrates are to give the assistance of the writers and mohurirs on their establishments to the surgeons, to enable them to prepare the periodical reports required of them on the state of the hospitals and jail. C. O. No. 138 of vol. 1.

Magistrate's writers to assist in preparing it.

2672. Whenever the mortality in the jail during any one month exceeds one per cent., the magistrate is to require the medical officer in charge of the jail to put on record, in the column of remarks of the monthly statement, his explanation of the cause of the excess, adding his own comments thereon; and, in cases of very extraordinary mortality, he is to make a special report on the subject, for transmission to government through the session judge, who is to append his own observations on the subject. C. O. No. 187 of vol. 2; and No. 98 of vol. 3, magistrate's rules, para. 67.

Explanation required when mortality exceeds one per cent.

2673. Magistrates are directed in all cases to report at once to the inspector of jails, all increase of sickness to strength, and of deaths to sickness, in their respective jails. The causes of the increased sickness and mortality, with the measures adopted to remove or mitigate them, are also to be brought to his notice without delay. C. O. Insp. Jails *L. P.* No. 51, September 20, 1856.

Increase of sickness and mortality to be reported to inspector.

2674. The corpses of all Hindoo prisoners, if not claimed by their friends, are to be thoroughly burnt; and are not to be thrown half-burnt into rivers or tanks. Such quantity of wood, as may be necessary for the purpose of consuming a corpse, is to be supplied by the contractor, on the application of the jail darogah; and the latter will be held responsible that it is used for the purpose intended. Wood thus expended will be entered in the jail contingent bill as one of the items of disbursement, which the officers in charge of jails can incur without previous sanction. The corpses of Mussulman prisoners, if not claimed by their friends, are to be decently buried by prisoners of their own religion; and the officer in charge of the jail may supply, if necessary, a piece of new cloth for wrapping round the body. This cloth will be charged in the jail contingent bill in the same way as is directed above regarding the wood. These orders are to be strictly carried out; and are not to be allowed to fall into disuse. C. O. Insp. Jails *L. P.* No. 19, January 9, 1855.

Rules regarding the disposal of the corpses of prisoners.

SECTION IV.

OF DIET AND CLOTHING.

Diet, Lower Provinces.

Rations to be given dry.
Two cooked meals.

Quality of food and care of it.

Supply of water.

Intermediate meals.

Money.

Musters of provisions.

Formation of messes.

Persons exempted from messing.

2675. (*Rule I.*) Every prisoner in the criminal jail is to be provided daily with dry or uncooked rations, and no money is to be paid to the prisoners on any account whatever. One cooked meal is to be supplied before and after labor, during the day, and in quantity and variety agreeably to the annexed table. The quality of the food is to be under unre-mitted supervision. Its preservation by the convict cooks is to be well attended to, and care taken that each individual receives his due share. Water if not at hand and procurable of good quality from wells, tanks, or rivers, should be brought by convicts, in gurrals or earthen vessels, from the nearest spot where good water is procurable, to enable the working prisoners to quench their thirst with wholesome drink during the day. Prisoners are to be permitted to take with them the whole or any remaining portion of the morning's cooked meal, and to eat it when inclined during the period of labor. Raw or parched grain is prohibited.(a) (V.) Money is not on any account to be carried into the jail.(b) (VI.) No bartering on any account is to be allowed. The prisoners are to be allowed only what is laid down in the subjoined form. (VII.) The medical officer of the station is to approve of the musters of the provisions. The musters are to be sealed up in bottles or jars, and the contract to be reduced to writing. (VIII.) All the prisoners in the criminal jail, those under examination or committed to the sessions only excepted, are to be formed into messes. (IX.) Each mess is to consist of 20 men as the standard number, and one cook to be allowed for that number. [This number must vary according to circumstances, such as the sufficiency or otherwise of a number of men of the same caste to form a mess of 20, or other cause. The rule is not intended to be imperative, but to serve as a guide to the magistrate in distributing the prisoners into messes. In the formation of messes, the prisoners sentenced to labor should be kept separate from those sentenced to simple imprisonment. As the labor of the cooks does not equal that of the other convicts, well behaved convicts might be employed as cooks; and a selection should be made from the convicts sentenced to labor for cooking the food of the convicts sentenced to simple imprisonment; and such cooks should mess with the prisoners for whom they cook.] (X.) Lists of any prisoners of the classes that ought to mess, but who for any special cause are exempted from messing, are to be submitted quarterly to govern-

(a) In the opinion of the medical board, the midday tiffin of parched grain, formerly allowed, invited the accession of the very ailments which have caused the greatest mortality among the prisoners. C. O. No. 143 of vol. 3.

(b) "Money affords the prisoners the daily enjoyment of marketing, which would be a great alleviation of the punishment of any class of men, but peculiarly agreeable to the Indian character. As this enjoyment has no good moral effect upon the prisoner, and tends to make the penalty of his crime less efficacious than it ought to be, the indulgence appears in this view an unmixed evil." *Report of the prison discipline committee, page 31.* It would be to no purpose to prevent marketing with money, if it were allowed to market with barter. C. O. No. 28 of vol. 3, para. 4.

TABLE of a prisoner's daily rations. C. O. Govt. Bengal, No. 38, November 24, 1851.

NON-LABORING CONVICTS.

MORNING MEAL.	EVENING MEAL.														
Rice.	Dall.	Vegetables.	Mustard oil.	Salt.	Mussalah per diem.	Total of each.	Rice.	Dall.	Vegetables.	Fish or Flesh.	Mustard oil.	Salt.	Mussalah per diem.	Total of each.	Grand total, daily food.
Chittacks. Chittack.	Chittack.	Chittack.	Chittack.	Chittack.	Chittack.	Chittacks.	Chittacks.	Chittacks.	Chittack.	Chittack.	Chittack.	Chittack.	Chittack.	Chittacks.	Chittacks.
5	1	0	‡	‡	‡	6‡	6	2	1	0	‡	‡	‡	9‡	15‡

WORKING CONVICTS.

MORNING MEAL.	EVENING MEAL.														
Rice.	Dall.	Vegetables.	Mustard oil.	Salt.	Mussalah per diem.	Total of each.	Rice.	Dall.	Vegetables.	Fish or Flesh.	Mustard oil.	Salt.	Mussalah per diem.	Total of each.	Grand total, daily food.
Chittacks. Chittack.	Chittack.	Chittack.	Chittack.	Chittack.	Chittack.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittack.	Chittack.	Chittack.	Chittack.	Chittacks.	Chittacks.
Monday,†...	5	1	0	‡	‡	6‡	7	0	2	2	‡	‡	‡	11‡	17‡
Tuesday, ...	5	1	0	‡	‡	6‡	7	2	2	0	‡	‡	‡	11‡	17‡

* One and a half seer of firewood or 1½ seer to be allowed as may be found requisite.

† The above change on alternate days of the week, except on Sundays, when the labouring convicts will receive the same as the non-laboring. Up-country prisoners should be allowed wheat flour instead of rice.

Diet of prisoners in hospital. The sick are to be divided into 3 classes. 1. Those who are to receive full non-laboring rations. 2. Those who are to receive half-rations. 3. Those who are to receive none. The first class consists of those who are in hospital for sore legs, or other complaints that do not affect their general health. The second includes those who are too unwell to consume the full allowance, or who may have part of their diet supplied by the civil surgeon, and charged in his monthly contingent bill. The third consists of all those who receive their whole diet from the civil surgeon. Firewood is given to all alike. The native doctor is to furnish a memorandum of the number of each class to the jail darogah early every morning, in order that the proper quantities may be made over to the hospital cooks. The civil surgeon is requested to check these memoranda frequently to see if they are correct. The diet table for second class prisoners is as follows:—

MORNING MEAL.	EVENING MEAL.											
Rice.	Dall.	Vegetables.	Oil.	Salt.	Mussalah.	Rice.	Dall.	Vegetables.	Oil.	Salt.	Mussalah.	Wood.
Chittacks. 2½	Chittack. ‡	Chittack. 0	Chittack. ‡	Chittack. ‡	Chittack. ‡	Chittacks. 3	Chittack. 1	Chittack. 1	Chittack. ‡	Chittack. ‡	Chittack. ‡	Seer. 1

C. O. Government Bengal, No. 120, January 9, 1852.

C. O. Government Bengal, No. 120, January 9, 1852.

ment with a column for remarks, in which the cause of exemption is to be briefly stated. [Exemption from messing should not be allowed for every trivial cause. The rule is that messes be formed, and the exceptions are to be as few as possible.*] (XI.) In the morning when the prisoners go to work, the mess cooks are to be employed in drawing water, cleaning the wards, washing the cooking utensils, receiving the rations from the contractor and making the necessary preparations for cooking: after this the cooks are to be employed in weeding in the jail. [This rule points out the mode of employing the cooks, who are not to be sent out with the working gangs. It is probable that objections on the score of caste may be occasionally made by the cooks to cleaning the wards of the jail. These will of course meet with proper attention from the magistrates.] (XII.) The magistrates are to provide iron degchies or cooking pots, to be proportioned to the size of the messes.* (XIII.) The surgeon of the station is to see the prisoners at a meal at least once a week, his visits to be at irregular intervals and unannounced. (XIV.) A public register is to be kept by the surgeon of his visits, in which are to be entered any remarks he may consider necessary regarding the dieting of the prisoners. It is the duty of the session judge to see that this register is regularly kept up. (XV.) Contractors are to be allowed to build store-houses for their grain on any government ground near the jail, and provided the contract is duly performed for one year by the individual erecting the same, one half of the cost of the store-house is to be defrayed by government. [The contract system for providing the food at a fixed rate all the year round should be had recourse to where it is practicable. The contract should be made with due regard to economy on the one hand, so as to protect the government against unnecessary expense, and on the other to the health of the prisoner, so as to ensure for him the full allowance fixed by government for his daily ration.] (XVI.) In addition to the standard ration, one pice [per week] is to be allowed for each prisoner for washing and shaving. (XVII.) All washing and shaving to be performed by contract.† [The foregoing rules are to be considered applicable in their full extent to the male convicts only. The magistrate may enforce them as far as he is able in regard to female convicts also; but the small number of female prisoners in most of the jails will, in many instances, render the application of them impracticable]. C. O. Nos. 89 and 145 of vol. 3.

* *v. infra, para*
 Employment of
 mess cooks.

Cooking pots.
 * C. O. No. 97
 vol. 3.
 Surgeon's visits.

Contractors and
 contracts.

and

† But see para.
 2658.

Rice must be one
 year old.

2676. Rice less than one year old is not to be served out to the prisoners. C. O. Insp. Jails *L. P.* No. 21, March 26, 1855.

Contracts to be
 by in-

2677. Every officer in charge of a jail is to submit his proposed rates of contract for the sanction of the inspector of jails. Govt. Order *Bengal* in C. O. Insp. Jails *L. P.*

Certain classes
 exempted from
 messing.

2678. Prisoners under examination, and prisoners sentenced to simple imprisonment without labor, as well as those who exempt themselves from labor by payment of a fine under Reg. II. 1834, are exempted from the ration and messing system; and are to receive a money allowance as formerly. C. O. Govt. *Bengal* No. 861, April 1, 1846; and No. 2359, November 30, 1846.

2679. In future all representations for the grant of special indulgences to prisoners for the sake of their health, are in the first instance to be addressed to the inspector, for such remarks as he may consider necessary to make before transmitting them to higher authority. The only exception to this rule must be in urgent cases when he is absent on circuit in districts more distant from the officer making the reference than the seat of government. In such cases magistrates are authorized to address the government directly. C. O. Insp. Jails *L. P.* No. 43, May 12, 1856.

Applications for special indulgences.

2680. The treasurer is not to be allowed to derive any profits from the exchange into pice of rupees disbursed for the diet allowance of prisoners. The pice, at whatever rate they are procurable, are to be charged for at the actual rate at which they are purchased. C. O. No. 270 of vol. 1.

Exchange of rupees into pice.

2681. The annexed diet table is in use in the Western Provinces.

Diet, Western Provinces.

No. of Class.	Denomination and class of prisoners.	Daily Allowance.					Twice a Week.		
		Atta.	Dal.	Salt.	Pepper.	Wood.	Vegetables in lieu of dal.	Oil in lieu of ghee.	
1.	Prisoners under sentence of labor, ...	Chs. 10, or of rice 8.	Chs. 2.	$\frac{3}{8}$ of a tola or 67½ grs.	1 head per day or 36 grs.	6 to 8 chs.	4 Chs.*	$\frac{1}{4}$ tola.	* Or 5 seers of vegetables and 1 chittack of oil for 20 prisoners; both articles to be cooked together.
2.	Prisoners under examination, non-laboring women and boys under 15 yrs.,	8 or 7 of rice.	2 do.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.	8 chittacks of fuel to each prisoner cooking singly, and 6 chittacks to every member of a mess, or 7½ seers to every mess of 20.
	Hospital diet to consist of four rates,	$\left\{ \begin{array}{l} 1 \\ 2 \\ 3 \\ 4 \end{array} \right. \begin{array}{l} 10 \\ 8 \\ 6 \\ 4 \end{array}$	$\left\{ \begin{array}{l} 2 \\ 2 \\ 2 \\ 2 \end{array} \right.$	$\left\{ \begin{array}{l} \\ \\ \text{Ditto.} \\ \text{Ditto.} \end{array} \right.$	$\left\{ \begin{array}{l} \\ \\ \text{Ditto.} \\ \text{Ditto.} \end{array} \right.$	$\left\{ \begin{array}{l} \\ \\ \text{Ditto.} \\ \text{Ditto.} \end{array} \right.$	$\left\{ \begin{array}{l} \\ \\ \text{Ditto.} \\ \text{Ditto.} \end{array} \right.$	$\left\{ \begin{array}{l} \\ \\ \text{Ditto.} \\ \text{Ditto.} \end{array} \right.$	Rice or other grain may be substituted at the discretion of civil surgeon and magistrate. The several kinds of dal, arhar and mung, to be supplied every alternate week. Red wheat to be supplied sound and free from insects.

Diet table.

The atta to be carefully ground, and freed from bran in the proportion of 1½ seer in every 40 seers of atta : 5 seers of barley may be added to every 35 seers of wheat. With due economy the diet of a prisoner should not cost more than 6 pie per day, though this must of course vary in some degree with the price of food.

Atta.

Cost of diet.

The civil surgeon may adopt any one or more of the 4 fixed rates of hospital dietary ; or prescribe extra items of hospital diet, furnishing the jailor every morning with a memorandum of the total quantity of rations required. Rations will not be drawn for prisoners receiving extra diet.

Hospital dietary.

Two chittacks of chabena may be allowed to each laboring prisoner, when recommended by the civil surgeon. The parched grain is to be served out to the prisoners before they commence work in the morning, and it is left to their option to eat it then or afterwards.

Chabena.

No deviation from this scale is permitted, unless the civil surgeon states that the lives of the prisoners would be endangered by the delay in making a reference, in which case

Deviation from scale, when allowed.

immediate effect is to be given to his requisition, and a report made. C. O. Insp. Prisons *W. P.* No. 5, July 1, 1847 ; and No. 33, June 28, 1852.

Atta to be mixed
with water before
distributing offi-
cer.

2682. In order to secure properly-ground food to all and every prisoner alike, the cooks should mix and knead the ration of atta with water in the presence of the distributing officer, so as to prevent any sifting of the finer from the coarser parts of the meal. C. O. Insp. Prisons *W. P.* No. 5, July 1, 1847.

Grinding wheat
within the jail.

2683. The plan of purchasing the wheat needed for consumption through a trusty agent, and having it ground inside the jail by the prisoners themselves, is a valuable means of providing good nutritious diet in the place of adulterated food, and thus conducing to the improved health of the prisoners. But it must be borne in mind that trustworthy superintendence, and the unrelaxed personal exertions and scrutiny of the magisterial and medical authorities, are essential conditions of its success. C. O. No. 88 of vol. 3, para. 5.

What cooking
utensils are allow-

2684. Each mess of 20 prisoners is allowed one iron or wooden parat two feet broad, one batlohee of six seers weight, one tawa of two seers weight, and one iron karchul. These should be marked with the number of the mess. A prisoner not included in any mess should be allowed one batlohee, one thalee, one lota, one katora, and one tawa. C. O. Insp. Prisons *W. P.* No. 5, July 1, 1847.

Shaving.

2685. As a general practice it is desirable that every criminal prisoner who is sentenced to imprisonment with labor, should, on final confirmation of the sentence, or expiration of the period of appeal without an appeal being preferred, have his head and face close shaved, and be subsequently shaved once every 15 days, by prisoners set apart for this duty. The Hindu will retain the sikha. The beard and moustaches of all prisoners will be close trimmed. But magistrates are authorized to exempt from this rule those prisoners to whom they think that such a proceeding would be justly offensive or degrading. Seikhs in the jails of Umballa, Loodiana, and Ferozepore are exempted from this rule, and must be similarly exempted wherever they may be imprisoned. It must be carefully borne in mind, however, that the rule is not, in any case, to be made the means of unnecessarily harrassing respectable men who may be imprisoned under sentences liable to be reversed on appeal. C. O. Insp. Prisons *W. P.* No. 5, July 1, 1847. C. O. Insp. Jails *L. P.* No. 52, October 2, 1856.

Tobacco.
Prohibited to
prisoners.

2686. It has been proved by a mass of positive testimony that the views of the most eminent modern medical authorities upon the subject of the use of tobacco are correct—that it is a mere luxury ; that its employment is not necessary for the performance of any natural function ; and that it may, in a vast majority of cases, be abandoned at any time without detriment to health. Stringent measures are to be adopted to prevent the surreptitious use of tobacco, especially among out-door laboring prisoners. Whenever it is detected, the guards in charge of the prisoners, upon whom it is found, or who have been caught in the act of smoking or chewing tobacco, are to be punished, as it is impossible for the prisoners to procure forbidden luxuries without connivance or neglect of duty on the part of the said guards ; and the prisoners who are proved by sufficient evidence to have obtained tobacco are likewise to be subject to the proper penalty for a breach of jail discipline. Hajut prisoners

are not to be exempted from the general prohibition against the use of tobacco. This order is not intended to interfere in any way with the power now possessed by medical officers of prescribing tobacco in hospital to such patients as may appear really to require it. It is hoped, however, that this power will be exercised with the greatest care and judgment, that the hospital may not become the resort of malingerers, and of those who are desirous of escaping the proper penalties of their crimes. C. O. Insp. Prisons *W. P.* No. 32, June 24, 1852. C. O. Insp. Jails *L. P.* No. 44, May 15, 1856.

2687. The blankets or other clothes annually allowed to the prisoners, are to be served out at stated periods, and an account rendered of the old ones: care also is to be taken that the prisoners do not sell or dispose of them in any way. Jail rules, sect. 9, para. 25. **Clothing.**

2688. Arrangements are always to be made to distribute warm clothing on the 1st October of each year, as blankets can be purchased cheaper then than in the cold weather, and the probable number that will be required can be calculated as early as in July. C. O. Insp. Jails *L. P.* No. 7, July 18, 1854. Each prisoner is allowed one blanket in summer, and two in winter, one of the two being new. C. O. Insp. Jails *L. P.* No. 22, April 26, 1855. **Warm clothing
*L. P.***

2689. All prisoners in confinement during the cold season are to be furnished with blankets; but prisoners confined for short periods, when discharged, are to be required to give them up. The returned blankets, unless rendered unfit for use, are to be re-issued to other prisoners in similar predicament. C. O. No. 207 of vol. 2; and No. 93 of vol. 3. *W. P.* **Blanket;—to be
returned if good.**

2690. Every female prisoner is to be supplied twice in the year with twelve yards of cotton cloth, and every male with eight yards, and one yard to serve as a gumcha. To those sentenced for less than six months, the magistrate is to issue only such quantity as he may consider necessary. All persons convicted of felony to wear prison clothing. Misdemeanants are to be allowed their own clothing. Old clothing is to be taken away when new is issued; if very dirty, it should be destroyed; otherwise it should be made into massals, basket-pads, paper, or appropriated to any other use the magistrate may think proper. Cloth made in jails is to be charged at its bazar price; and care is to be taken that the darogahs do not charge an advanced rate for it to enhance their own commission. C. O. Insp. Jails *L. P.* No. 2, May 26, 1854, and No. 28, November 15, 1855. This clothing is to be distributed on the 1st June, and 1st December. C. O. Govt. *Bengal*, No. 1342, July 20, 1853. **Cotton clothing
*P.***

2691. Each prisoner is to be allowed a piece of sacking for his bed 8 feet long by 2½ wide. This length will allow of one end being turned over to form a pillow; and strings should be attached to the other end, by means of which the prisoners will be able, when they rise in the morning, to tie up the bedding in a neatly rolled bundle. C. O. Insp. Jails *L. P.* No. 22, April 26, and No. 26, June 15, 1855. **Bedding *L. P.***

2692. All prisoners who are confined within the walls of the jail (as distinguished from those who are still permitted to work beyond its precincts) are to wear a distinctive **Color of dress**

uniform dress, varying in its color according to the class of offenders to which the convict belongs. The following colors are to be adopted to mark the several classes of prisoners:

No.	CRIMES.	COLOR.
1st Class.—	Dacoity, burglary, highway-robbery, child stealing, giving } poison, and theft with wounding,	Indigo.
2nd Ditto.—	Cattle stealing, theft, possessing stolen property knowingly, } bad-livelihood,	
3rd Ditto.—	Forgery, counterfeiting base coin, perjury, breach of custom } laws, fraud, &c. &c.,	Red.
4th Ditto.—	Assault with wounding, simple assault, abusive language,	White.
5th Ditto.—	Culpable homicide, affray with ditto, simple ditto, aggravated } assault, and trespass,	Garoo or light Red.

Convicts working on the roads beyond the jail are for the present to continue to wear the yellow uniform which is generally recognized throughout the country as the prison dress. C. O. Insp. Prisons *W. P.* No. 64 of 1855.

Quantity and
description of cloth-
ing and bedding *W.*
P.

2693. Every male prisoner is to be allowed two dhoties, one mirzai, one angocha, and one blanket: and each female two lengahs, two koortees, one chudder. A tat-puttee bedding, six feet by two, is to be allowed to each prisoner; and on the 20th September a blanket coat and an additional blanket are to be served to each, the latter articles being taken back at the end of the cold weather, and stored for another season. Extra tat-puttee beddings, and extra blankets marked H and numbered consecutively, are to be allowed to every hospital. C. O. Insp. Prisons *W. P.* No. 5, July 1, 1847. If a prisoner has not retained the blanket allowed to him during the year, a second should be supplied to him on the 15th November. C. O. Insp. Prisons *W. P.* No. 20, August 8, 1849.

Out, and indl-
prisoners.

2694. The several magistrates throughout the Lower and Western provinces are authorized to furnish to the prisoners under examination, or committed for trial, and generally to all other prisoners who may from indigence be unable to supply themselves, the same quantity and description of clothing as is at present, or may hereafter be, authorized for those prisoners who are strictly denominated convicts. The magistrate is to exercise his discretion in furnishing such articles for the prisoners above alluded to, with reference to their real wants and necessities, whether at the time at which the prisoners are first brought in, or at any other periods during their confinement. The magistrates of the several stations within the Western provinces are authorized to furnish annually an additional blanket. C. O. No. 209 of vol. 1.

SECTION V.

OF FETTERS AND OFFENCES.

2695. In all cases wherein no specific orders are issued, either by the nizamut adawlut or the sessions court, for the confinement of a prisoner with or without irons, the magistrate is at liberty to exercise his own discretion, and to direct the prisoner to be confined in fetters or not, according as the same appears to him proper or necessary for his safe custody, from the nature and circumstances of the case, considered with the prisoner's rank and former condition in life. C. O. No. 122 of vol. 1.

Fetters.
Discretion to impose allowed to magistrate in certain cases.

2696. So, the magistrates may use their discretion in imposing fetters on native soldiers and camp-followers, who are made over to the civil authorities to undergo sentences of imprisonment adjudged against them by courts martial. C. O. No. 155 of vol. 3. *W. P.*

Cases of soldiers and camp followers.

2697. The rules of sect. 3, Reg. II. 1834 (which exempt prisoners from labor in certain cases on payment of a fine) do not interfere with the general discretion vested in magistrates of imposing fetters, or otherwise restraining refractory prisoners. Reg. II. 1834, sect. 4.

Prisoners who have bought exemption from labor.

2698. The magistrates are not to impose fetters on persons confined for misdemeanors, except in the event of special necessity arising out of bad conduct of the offender during his imprisonment, which may make such restraint indispensable for his security: when, therefore, the magistrate places fetters under this restriction on any person convicted of misdemeanor, he is to record on his proceedings the grounds of the measure in each case. C. O. Nos. 217 and 223, *L. P.* and No. 224 *W. P.* of vol. 1.

Prisoners confined for misdemeanors.

2699. Female prisoners are not to be subjected to irons, except in cases where some special necessity exists for their use, as a precautionary measure, such as by way of security to prevent escape. C. O. No. 31 of vol. 3.

Female prisoners.

2700. The fetters generally used in the public jails are to be of a light and uniform construction; and no fetters exceeding the usual size and weight are to be put upon a prisoner without the special sanction of the magistrate. Jail rules, sect. 9, para. 10.

Fetters to be made of a cert. size and weight.

2701. The fetters are to consist of two bars connected by a moveable ring, and fastened to the legs by rings in such a manner as to allow sufficient freedom of motion; and those in ordinary use are not to exceed in weight one seer and a half, the seer being that of eighty siccas. The magistrate may cause fetters of less weight to be used whenever it appears safe and proper, with reference to a prisoner's age, size, strength, state of health, or to his general behaviour and character. This rule, however, is not meant to preclude the use of heavier fetters in cases of an attempt to escape, or disorderly conduct, for which the substitution of heavy fetters is expressly authorized by section 6, Reg. XIV. 1816. C. O. No. 207 of vol. 1.

How to be made.

Fetters to be kept bright and clean.

2702. The irons worn by prisoners, and more especially the rings around their limbs, are at all times to be kept bright and polished. All sordes and dirt are to be carefully removed and prevented from remaining in contact with the skin of the convicts. The civil surgeon is occasionally to examine, and to record the state in which he finds them for the information and orders of the magistrate. C. O. Insp. Jails *L. P.* No. 29, December 24, 1855.

Leather mozehs to be used.

2703. In order to protect the legs of the convicts from ulceration in consequence of the friction of the fetters, the magistrate is directed to cause every convict in the jail, confined in fetters, to wear leather gaiters or mozehs, extending a few inches above the ankle; and to enjoin the guards to be careful that the convicts do not take them off while out at their work. Care is to be taken that the rings of the fetters, placed on newly admitted convicts, are quite clean, and freed from all asperities arising from dirt or rust or carelessness in the original construction. If ulceration ensues at any time, the fetters should be immediately removed. Magistrates are at liberty to use their discretion in substituting chains for the long iron links generally in use; but it seems doubtful whether the security of the prisoners might not be diminished by the adoption of chains,—as the chains might be sooner cut through, unless the links were made of a thickness which would add materially to their weight. C. O. Nos. 38 and 95 of vol. 2.

Chains may be substituted for long links.

Handcuffs and neckchains.

2704. Handcuffs and neck-chains may be used occasionally for prisoners evincing a refractory disposition; but except in cases of emergency, the necessity for them is to be previously reported for the orders of the magistrate. Jail rules, sect. 9, para. 11.

The imposition of rings on prisoners not sentenced to irons, forbidden as a general measure.

2705. The practice of placing an iron ring round one ankle of prisoners sentenced to imprisonment without labor and irons, or to imprisonment with labor but without irons, is prohibited as a general measure. Prisoners should be dealt with in jails in strict accordance with the terms of the sentences judicially passed upon them; and if, in cases of infraction of jail discipline or refractory conduct, it may be found necessary to put irons or rings upon prisoners of any description, the magistrate is immediately to place on record in the jail order book the reasons which have induced him to order their imposition. C. O. Insp. Jails *L. P.* May 21, 1856.

Stocks.

2706. The construction of substantial jails in each jurisdiction having rendered it unnecessary for the safe custody of prisoners in such jails that they should be confined in stocks, except in special cases of exigency, the ordinary use of stocks in the public jails is strictly prohibited. If at any time a magistrate, under special circumstances, considers the temporary use of stocks to be indispensably requisite for the custody of any of the prisoners under his charge, he is authorized to direct the same; but is immediately to transmit a full report of the case for the information and orders of the session judge. C. O. No. 183 of vol. 1.

Fetters not to be removed without order of magistrate.

2707. The jailor is not without a special order from the magistrate to take off the irons of any prisoner, except in case of any sudden emergency not admitting of the delay of a reference to the magistrate, or when prisoners are confined in the infirmary in too

weak a state to bear the weight of their irons; and such cases, when they occur, are to be immediately reported to the magistrate. Jail rules, sect. 9, para. 13.

2708. The fetters of the prisoners are to be examined by the jailor or his deputy before they are put into the ward. And he is at the same time to enjoin on the convicts the necessity of keeping the rings clean, and to bring to the notice of the magistrate any instances of their disobeying this order. C. O. No. 95 of vol. 2. Jail rules, sect. 9, para. 12.

Jailor to examine fetters, and to take care that they are kept clean.

2709. Any convict who is found to have loosened his irons, is to be fettered with handcuffs and neck-chains. Jail rules, sect. 9, para. 32.

If fetters have been loosened.

2710. If any prisoner makes a riot and disturbance, or attempts to resist any of the guard, he is immediately to be put in chains and handcuffs, and the circumstances of the case are to be reported to the magistrate. Jail rules, sect. 9, para. 27. And the imposition of handcuffs under such circumstances by order of the magistrate is no bar to a sentence by a competent court on a formal trial for such riot. Reports *L. P.* 1852, part 1, page 596.

Prisoners making disturbance.

2711. For the purpose of enabling the magistrate to maintain good order and discipline among the prisoners confined in the public jails, or other authorized places of confinement, and to enforce a due observance of the prescribed rules by the employment of the prisoners under their charge, they are vested with authority to punish, on a summary inquiry, the offences below specified. Reg. XIV. 1816, sect. 4.

Offences.

Magistrate is vested with authority to punish on a summary inquiry the following offences, viz.

2712. A contumacious refusal to work by any prisoner sentenced to hard labor, or though not so sentenced who is subject to labor under any provision in the regulations, or under the discretion declared to be vested in the magistrate, by the orders of the court of nizamat adawlut, with respect to prisoners not exempted from labor by the sentences of the criminal courts, and not incapable of bodily labor from age, sickness, or other infirmity. Reg. XIV. 1816, sect. 5, cl. 1.

contumacious refusal to work ;

2713. Wilful neglect and indolence in the performance of any prescribed work by a prisoner subject to labor, as described in the above clause, especially after previous admonition. Reg. XIV. 1816, sect. 5, cl. 2.

neglect and indolence ;

2714. Wilful disobedience to any of the written rules for the observance of prisoners and internal economy of a public jail, which have been translated into the current language of the country, and suspended on a board within the jail for general information, as directed in the printed jail rules now in force. Reg. XIV. 1816, sect. 5, cl. 3.

disobedience to written rules suspended in the jail for general information ;

2715. Refractory behaviour by prisoners; such as resistance to the jailor, guards, or other public officers, in the regular discharge of their proper functions; abusive language to any such officers; and generally, any culpable behaviour towards them which does not involve a serious act of criminality, such as cannot be duly punished by the magistrates, and should therefore be brought before the sessions court. Reg. XIV. 1816, sect. 5, cl. 4.

refractory ;

2716. Any other instance of disorderly conduct by a prisoner; such as riot, insurrection, attempt to escape, taking off, or loosening or attempting to loosen by filing, cutting or otherwise, his own irons, or those of other prisoners, with a view to escape; conspiring

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with other prisoners for the purpose of insurrection or escape, or for any other criminal purpose ; abusing or assaulting another prisoner ; and generally any misconduct committed by a prisoner whilst in custody, which under the regulations in force, or from its aggravated nature, does not exceed the competency of the magistrate, and is therefore more properly cognizable by the sessions court. Reg. XIV. 1816, sect. 5, cl. 5.

and disabling themselves for labor.

2717. Prisoners disabling themselves for labor are guilty of a breach of prison discipline, and as such are punishable by the magistrate under the general rules laid down for the management of public jails. Const. No. 1152.

What punishment the magistrate may award ;

2718. The powers vested in the magistrates for the punishment of the offences specified in the preceding section, which on a summary inquiry appear to have been committed by any of the prisoners under their charge, are declared to be as follows ; due regard being had to the nature of the offence, the condition of the prisoner, and every other just consideration applicable to the case. Reg. XIV. 1816, sect. 6, cl. 1.

for contumacious refusal to work, neglect, or indolence ;

2719. In cases of a contumacious refusal to work, or of wilful neglect and indolence in the performance of any prescribed work, within the first and second clause of section 5 of this regulation, the magistrate may cause the prisoner to be moderately corrected with a rattan [in certain cases, see below] ; and in the instance of a prisoner's pertinaciously refusing to work, may likewise order his diet allowance to be reduced, in such degree as is consistent with his support, until he performs the work required from him. Reg. XIV. 1816, sect. 6, cl. 2.

for disobedience to written rules, refractory or disorderly conduct.

2720. The offences specified in the third, fourth, and fifth clauses of the preceding section are punishable, according to the nature and circumstances of the case, by stripes with a rattan, not exceeding the general limitation prescribed for this mode of punishment by a magistrate, viz. thirty rattans [in certain cases, see below], or by close and as far as practicable by solitary confinement ; or when a prisoner has attempted to escape, by the substitution of heavy fetters for those in ordinary use, which are directed by the jail rules to be of a light and uniform construction ; by the temporary addition of neck-chains of a moderate weight, when the prisoner has been refractory or turbulent, or guilty of any act of violence ; and in aggravated or emergent cases of this nature, by the further restraint of handcuffs, whilst such restraint, which is never to be imposed without necessity, appears to be requisite for the safeguard of the prisoner, or to prevent his doing mischief to others. Reg. XIV. 1816, sect. 6, cl. 3.

Convicts under sentence of imprisonment for life, who are likely to cause the death of another, how punishable.

2721. Within the territories subject to the government of the East India Company, except within the local limits of the jurisdiction of the supreme court, and except within the settlements of the Straits of Malacca, any convict sentenced to imprisonment for life, or to transportation for life, who does any act, with the intention of thereby causing, or with the knowledge that he or she is likely thereby to cause the death of any person, is, upon conviction thereof before the sessions court, subject to confirmation by the sudder court, to be punished with death or with transportation for life, or with corporal punishment not exceeding 39 stripes, whether such convict does or does not by such act cause the death of any person. Act XVIII. 1845, sect. 1.

2722. Any such convict as aforesaid, who commits any offence whatever, other than the offences mentioned in the preceding section, or who is guilty of violent or disorderly conduct, after having been punished by the order of the superintendent of the jail in which he or she is confined, is, upon conviction thereof before the sessions court, subject if the sentence be for transportation for life to confirmation by the sudder court, to be punished with transportation for life, or with corporal punishment not exceeding 39 stripes. Act XVIII. 1845, sect. 2.

Such guilty of other violent or disorderly acts, how punishable.

2723. The provisions of cl. 1, sect. 2, Reg. II. 1834 (which rescinds the power to pass sentence of corporal punishment) do not exempt convicts sentenced to labor in irons from such moderate corporal punishment during their imprisonment, as is unavoidable for the maintenance of the discipline of the jails. Reg. II. 1834, sect. 6.

Laboring prisoners are still liable to corporal punishment;

2724. Under the above provision, all offences which are opposed to the maintenance of discipline in the public jails (as those enumerated in sect. 5, Reg. XIV. 1816) are, when committed by convicts sentenced to labor in irons, punishable with stripes; but it is to be borne in mind, that such punishment must be moderate, and that it should be inflicted only when it is thought to be unavoidable for the maintenance of the discipline of the jails.(a) C. O. No. 235 of vol. 3.

but it must be moderate, and only in unavoidable cases.

2725. Corporal punishment is to be inflicted in the presence either of the magistrate or of his assistant; and the office of superintending the infliction of stripes is never to be deputed to a native ministerial officer. C. O. No. 59 of vol. 2.

The infliction must be attended by magistrate, or his assistant.

2726. No prisoner is to be flogged without the opinion of the civil surgeon being first taken as to whether the case be one in which that punishment can be safely administered. As a general rule, stripes should be inflicted upon the breech and not upon the back, proper measures being adopted to guard against the blows falling upon any other than the part intended to receive them. C. O. Govt. Bengal, No. 1019, May 13, 1852.

Examination by surgeon before punishment.

Stripes to be inflicted on the breech.

2727. No female is to be sentenced to corporal punishment by stripes. Reg. XII. 1825, sect. 3.

Females are not liable to corporal punishment.

2728. The powers vested in magistrates by the above rules may, of course, be exercised by joint magistrates, and assistant magistrates, who are not stationed at the same place with the magistrates, and who under the general regulations are invested with the authority of magistrates, with respect to prisoners under their immediate charge. The magistrates are further empowered to refer to their assistants at the sudder stations any cases within the provisions of this regulation: observing the rule prescribed in section 21, Reg. IX. 1807*, viz. that the order of reference direct whether the assistant is to submit his proceedings for the magistrate's decision, or to pass his own determination on the case referred to him. If the assistant be authorized to determine the case referred to him, he is empowered to pass the same order as might have been passed by the magistrate; but his decision is open to revision [on appeal†] by the magistrate, if the latter see cause for it, as provided in the section above cited with respect to all judgments passed by the assistant to a magistrate, who is not vested with the full powers of magistrate. Reg. XIV. 1816, sect. 7.

Power of joint magistrate and assistant in such cases.

* v. para. 771.

† v. para. 1849.

(a) This order rescinds C. O. No. 1 of vol. 3, which made it imperative that the corporal punishment should be inflicted at the moment, following so immediately on the offence, as to deter others by the force of example.

2729. If in any case the magistrate considers the punishment he is authorized to inflict inadequate to the offence, he is to commit the prisoners to take their trial before the sessions court. Const. No. 85.

But he cannot both punish and commit.

2730. Prisoners punished by the magistrate for breach of jail discipline cannot be committed to the sessions for the same offence, as any further punishment would be cumulative and therefore illegal. N. A. R. vol. 6, page 58.

Judge cannot inflict corporal punishment.

2731. It is not competent to a session judge to award stripes under sect. 6, Reg. II. 1834, that power being vested solely in the magistrate for the maintenance of discipline in the jail. Const. No. 1302.

Example of punishment.

2732. A prisoner confined in jail under sentence of 7 years' imprisonment without labor, was convicted of making an assault on the magistrate, while in the execution of his duty; and sentenced to receive 15 corahs, and to be imprisoned in handcuffs and fetters for the space of 7 years in addition to his former sentence, and to be kept to hard labor: but the magistrate was allowed to relax the restraint of handcuffs, whenever from the prisoner's behaviour he might consider it safe to do so. N. A. R. vol. 1, page 329.

2733. A prisoner, under sentence of 14 years' imprisonment, was convicted of attacking the magistrate, while in the execution of his duty, and striking the jailor and the jemadar, and sentenced under sect. 7, Reg. LIII. 1803, to transportation for life. Reports *L. P.* 1853, part 2, page 152.

2734. The life-convicts in the Alipore jail attacked the magistrate, jailor, and guards. The two principals were convicted of assaulting the jailor in the execution of his duty with the intent to cause his death, and were sentenced capitally. The remaining prisoners were convicted of aiding and abetting in the attack on the magistrate and his officers, severely wounding them, and of having joined in such attack with the intent of causing death, or with the knowledge that they were likely to cause death, and were sentenced to transportation for life. Reports *L. P.* 1852, part 1, page 295.

2735. The prisoners, while convicts under confinement in the Alipore jail, assaulted and wounded some of the other convicts, and were sentenced, the ringleader to transportation for life (13 years' of his former sentence being still unexpired), and the remainder to additional imprisonment for 3 years. Reports *L. P.* 1852, part 1, page 596. In a similar case the ringleaders were sentenced to 7 years', and the others to 5 years' additional imprisonment. Reports *L. P.* 1852, part 1, page 605.

Precedent of riot and insurrection in jail.

2736. The prisoners, convicts, were convicted of riot and insurrection in jail, and sentenced, the leader to imprisonment with labor and irons in transportation for life, and the others to imprisonment with labor and irons in banishment for 14 years. N. A. R. vol. 6, page 61.

Records to be kept of such cases.

2737. It is not necessary to make a detailed record of the evidence, or of any part of the proceedings, held in the summary inquiries authorized by this regulation; nor is it requisite to examine witnesses upon oath, except in cases of a serious nature, involving offences specifically provided for by the general rules in force for the administration of criminal justice. But a record is to be kept of every summary conviction and punishment; stating the name of the prisoner; the offence charged against him; the substance of the

evidence and conviction; or the magistrate's personal view when the facts of the case have taken place within his view; and the punishment ordered with the date of the order; to be signed by the public officer by whom it is passed. The record so authenticated is to be kept ready for the inspection of the session judge on his visiting the jail, that a reference may be made to it in the event of any complaints being preferred by the prisoners. Should the session judge see cause to disapprove the order of a magistrate, or his assistant, in any instance, he is to notice the same to the magistrate, with any instructions which appear necessary, and are consistent with the regulations in force; or if the magistrate, or his assistant, appears in any instance to have been guilty of any gross neglect, or other misconduct, such as is required to be reported to the nizamat adawlut by sect. 63, Reg. IX. 1793 (*Ced. Prov.* sect. 30, Reg. VII. 1803)* or by any other regulation in force, the judge after calling for any requisite explanation is to report the same accordingly. Reg. XIV. 1816, sect. 8.

Duties of session judge.

v. para. 699.

2738. No appeal lies to the session judge from the order of a magistrate passed under Reg. XIV. 1816. The penal provisions of that regulation are not repealed by Act XVIII. 1844, which regards merely arrangements of executive control and superintendence. Section 2 of the Act quoted by no means confers an unlimited authority on the government to direct the infliction of such punishments within jails as it pleases. Letter of Nizamut Adawlut to Judge of Bakergunj, No. 295, March 24, 1853.

No appeal lies to the judge.

Power of government.

SECTION VI.
OF ESCAPE.

2739. The magistrate is to keep up, and regularly revise, in the vernacular language, a register of the names of convicts who have broken jail, or have otherwise effected their escape, in the annexed form. A copy of this register is to be forwarded on the 1st of January and the 1st of July in each year, to the superintendent of police.

Register of escaped prisoners.

Register of convicts who have broken jail, or have otherwise effected their escape.

Name and caste of the persons who have escaped from jail.	Name of the father.	Supposed age.	Description of his person.	Supposed usual place of residence.	Amount of reward offered for his apprehension.	Date of apprehension, surrender, or ascertained death.	No. of case; the year in which it is preferred; and in what part of the record office the record is to be found.

Reg. III. 1812, sect. 9, cl. 1 and 2.

2740. A half yearly return is to be made to office of inspector of prisons on the 1st of January and 1st of July in the subjoined tabular form, shewing the number of convicts who have broken jail during the 20 years preceding and are still at large. Persons, who escaped more than 20 years since, may be inserted, if special reasons exist. When any such convict is re-captured, his name should not be omitted from the next succeeding return, but

Half yearly es.

the fact of his apprehension should be mentioned in the column of remarks and his name struck out of the subsequent lists.

				5	6
Name of convict. Father's name, caste, he was convicted, sen- village to which he tence, and date of sen- belongs, pergunnah, tence. and zillah.	Offence of which	Date and cir- cumstances of es- cape.	Amount of re- ward offered.	Description of the convict's per- sonal appearance.	Remarks.

C. O. Insp. Prisons *W. P.* Nos. 60 and 68 of 1855.

Particulars of
each escape to be
reported.

2741. Government requires that proper vigilance should be exercised in preventing the escape of prisoners from jail. The particulars of each escape are to be explained in the monthly returns. C. O. Govt. *Bengal*, No. 1368, October 20, 1849.

Inquest to be held
on dead bodies of
prisoners before re-
moval.

2742. To prevent the escape of prisoners from jail by feigning themselves dead, the magistrate is not to allow the removal of the bodies of prisoners who die in jail, until an inquest has been held on them by the native surgeon of the station, and such other persons as the magistrate appoints for the purpose, and the result of such inquest regularly reported. C. O. No. 26 of vol. 1.

And in cases of
doubt the surgeon
is to inspect the
body.

2743. In any case in which there appears to the native doctor, or other officers associated with him, to be the slightest doubt with regard to the actual death of a prisoner, the body is not to be removed until it has been examined by the civil surgeon himself. But surgeons are not to be required to inspect previously to their removal the bodies of all prisoners reported to have died in the jail. C. O. No. 204 of vol. 1.

Proceedings of
magistrate to be
submitted to judge.

2744. All proceedings held by magistrates in regard to the escape of prisoners, as well as any proceedings respecting the conduct of the guards from whose custody the escape has been effected are to be submitted for the inspection and orders of the session judge. Reg. XVII. 1816, sect. 14, cl. 1. Const. No. 1162.

Information of
escape to be for-
warded to superin-
tendent of police.

2745. The magistrates are to communicate to the superintendents of police of their respective divisions all instances of convicts breaking jail before the expiration of the period of their sentences, as well as every instance in which a prisoner in custody, during examination, or commitment for trial, or under requisition of security for good behaviour, effects his escape; transmitting for the information of the superintendent of police a copy or extract of the proceedings holden by them on such occasion, together with information of the measures taken to re-apprehend the persons who have escaped; and stating at the same time whether in their opinion it is advisable to offer any reward for the re-apprehension of such persons, and if so the amount of such reward. Reg. XVII. 1816, sect. 14, cl. 2.

Rules for offering
rewards for re-ap-
prehension.

2746. The reports regarding the escape of prisoners to the session judges and the superintendents of police, required from magistrates by the above provisions, are to be forwarded as heretofore [before the passing of Act XVIII. 1844]. But the power of sanctioning rewards for the re-apprehension of escaped prisoners is transferred from the superintendents of

police to the magistrates, who are authorized to proclaim rewards in such cases to the extent of 50 rupees. In cases where it is deemed expedient to offer a higher reward than the above, the magistrates are to report the circumstances direct to government for its sanction. In cases however in which heinous offenders have escaped, or on occasions of emergency, the magistrates are to exercise a discretion, as heretofore, in offering a reward not exceeding 100 rupees, reporting the offer for the confirmation of government. C. O. Govt. Bengal No. 1072, October 10, 1844, para. 9.

2747. All applications for the issue of rewards for the recovery of escaped convicts from the jails under the inspector of prisons must in the Western Provinces be made to that officer who is authorized to sanction such offers to an amount not exceeding 100 rupees in each case. Where larger offers are proposed, the inspector will report the case for the previous sanction of government. Govt. Order W. P. No. 149, January 18, 1851.

Inspector W. P. may sanction a reward of 100 rupees in each case.

2748. In the Western provinces magistrates are required, on the escape of a convict for whose re-apprehension a reward has been sanctioned of 100 rupees or upwards, to forward without delay a notification in annexed form for publication in the Agra government gazette, accompanying the same with a translation into Oordoo.

Notification in government gazette.

Descriptive roll of convict sentenced to imprisonment for life (or years) who escaped from confinement on the of 184

Name of Prisoner.	Caste and age.	RESIDENCE.			Crime and date of sentence.	Whence escaped.	Remarks.
		Village.	Pergunnah.	District or country.			
							To contain description of fugitive's person, notice of any reward offered for his apprehension, or other particulars.

MAGISTRATE'S OFFICE,
Zillah the of 184

A. B.,
Magistrate.

C. O. No. 105 of vol. 3. W. P.

2749. The superintendent of police is to employ, in concert with the magistrate, the means which he considers best adapted to effect the re-apprehension of the offender. Reg. XVII. 1816, sect. 14, cl. 3.

and superintendent to adopt means for re-apprehension.

2750. The cases of convicts, or of prisoners ordered to be confined till they give security for good behaviour, who effect their escape while under sentence, or order of imprisonment, from a jail or other place of confinement, or from the custody of their guards, are cognizable by the magistrate; and upon conviction, the magistrate is empowered to sentence the offenders to corporal punishment not exceeding thirty stripes with a ratan, and (if sentenced to a limited period of imprisonment) to suffer such period of imprisonment beyond the unexpired term of their original sentence, as he judges proper, provided, however, that such additional imprisonment is in no case to exceed the period of two years. If the prisoner is in confinement under an order to find security for good behaviour, he may be sentenced to imprisonment for a specific term not exceeding two years. Reg. XII. 1818, sect. 5, cl. 1.

Cases of escape cognizable by magistrate;—limit of punishment.

He may commute stripes to imprisonment ;

2751. A magistrate may sentence a prisoner, convicted of escaping, to one year's imprisonment in lieu of stripes, in addition to the term he is authorized to award under the above provisions. Const. No. 1184.

but may still inflict stripes.

2752. But under the terms of the exception contained in sect. 6, Reg. II. 1834, the magistrate is not precluded by sect. 2 of that regulation from awarding stripes to persons convicted of any of the offences enumerated in these provisions. C. O. No. 14, November 13, 1846. (*This rescinds Const. No. 993.*)

No subsequent punishment can be added to that immediately inflicted for breach of jail discipline.

2753. Five convicts were tried for heading an insurrection in the Deegah penitentiary, in which the magistrate's authority was resisted, and his life placed in danger, and were convicted ; but no punishment was awarded, because the magistrate had inflicted corporal punishment, previous to commitment, for breach of jail discipline ; and any sentence would therefore have been a second punishment for one and the same offence. N. A. R. vol. 6, page 58.

So, prisoners escaping before trial.

2754. The cases of prisoners apprehended and detained in custody under examination on charges of a criminal nature, but not admitted to bail, who effect their escape from a jail or other place of confinement, or from the custody of their guards, are also cognizable by the magistrates ; and such prisoners, being duly convicted of the offence in question, are liable to a sentence of imprisonment in no case exceeding six months. Reg. XII. 1818, sect. 5, cl. 2.

Example of escaping from hajut.

2755. A prisoner in the hajut-tujveez jail, convicted of making his escape from the Bareilly jail during an insurrection of the prisoners, in which several persons were killed and wounded, there being, however, no proof that he had been actively concerned in the insurrection, was sentenced to imprisonment for 5 years with hard labor. N. A. R. vol. 1, page 346.

So, prisoners escaping after sentence, and before issue of warrant.

2756. A prisoner was convicted and sentenced by the sessions court, but the issue of the warrant was stayed pending a reference regarding other prisoners in the same case to the nizamat adawlut : before orders were received on the reference, the prisoner made his escape from jail. Held that he was punishable by the magistrate as a convict under the above provisions. Const. No. 1246.

Sentence above 6 months' to be reported to judge.

2757. When the magistrate sentences any person under these provisions to a longer period of imprisonment than six months, he is to report the case to the session judge ; and the powers vested in the session judge, and the nizamat adawlut, with regard to the revision of sentences and orders passed by the magistrates, are applicable to all sentences and orders passed by the magistrate under this regulation. Reg. XII. 1818, sect. 6, cl. 1.

Same powers may be exercised by superintendent of police and joint

2758. The superintendents of police, and officers vested with the powers of joint magistrate, are competent to exercise the same powers and functions as are entrusted to the magistrates by the above provisions. Reg. XII. 1818, sect. 6, cl. 2.

Offender to be committed to sessions, if escape is attended with severe personal injury to person.

2759. The rules contained in the two preceding clauses [paras. 2750 and 2754] are not, however, to be considered applicable to the cases of convicts, or other prisoners, who in effecting their escape, or in attempting to effect their escape, are guilty of such a degree of violence towards their guards or other individuals, as may in its consequences involve the death, wounding, or severe personal injury of any person or persons. In all

cases of that nature, it is the duty of the magistrate to commit the offender to take his trial before the sessions court. Reg. XII. 1818, sect. 5, cl. 3.

2760. Any persons brought to trial before the sessions court [under the above provision] are liable on conviction to such further punishment, in addition to their former sentences, as may be adjudged against them, on consideration of the circumstances of the case, under the provisions contained in this regulation. Reg. LIII. 1803, sect. 9, cl. 1.

Punishment in such cases.

2761. When the escape of a convict is not attended with violence, it is not competent to the magistrate to commit him to the sessions, although he may have been several times previously convicted of that offence. The magistrate must himself dispose of the case. Const. No. 501. N. A. R. vol. 6, page 187.

Magistrate cannot commit, unless escape is attended with violence.

2762. A prisoner effecting his escape while under commitment cannot, on his re-apprehension, be committed on the original charge and on a second count for the escape. A second count should charge some act arising out of the same circumstances as the original or first count. N. A. R. vol. 6, page 75.

A for jail to the original offence.

2763. A prisoner sentenced to imprisonment for escaping from jail is entitled to exemption from labor, on payment of a fine, for the period of his confinement for that specific offence. Const. No. 1215.

Prisoners under sentence for escape may be exempted from labor on payment of fine.

2764. A prisoner sentenced by the session judge to fine and imprisonment appealed to the nizamat adawlut, and was admitted to bail pending the appeal; he absconded and the bail was forfeited. Held that his property was not liable to forfeiture for evasion of process, under Reg. XI. 1796 and sect. 26, Reg. XX. 1817, which are applicable only to persons charged with a crime, but not convicted; but that he must be proceeded against as an absconded convict. Const. No. 1124.

Property of no jail liable to forfeiture.

2765. Any convict, under sentence of transportation for life, who has been transported to any place beyond sea, and escapes from such place of transportation, and returns without permission to Bengal, or to any part of the Company's territory under the presidency of Bengal, is on conviction thereof, to the satisfaction of the nizamat adawlut, and if no circumstances appear to that court to render such convict an object of mercy, to be adjudged to suffer death. Reg. LIII. 1803, sect. 9, cl. 2.

From transportation.

When sentence is for life, the punishment for return is death.

2766. A futwa must be taken on trial of convicts for escape under the above provisions. Const. No. 47.

Futwa must be taken in such cases.

2767. A convict under sentence of transportation for life made his escape from Prince of Wales's Island, and returned to Bengal. The court, not considering him to be a proper object of capital punishment (on what account does not appear) sentenced him to 39 korahs and to be again transported. N. A. R. vol. 1, page 231.

Examples of punishment for returning from transportation.

2768. A prisoner was convicted of making his escape from ship-board, while on his way to the place to which he had been sentenced to be transported. Sentence:—25 strokes of a ratan, and his former sentence to be considered in full force. N. A. R. vol. 3, page 168.

2769. A prisoner was convicted of returning from Prince of Wales's Island, where he was under sentence of transportation for life. The advanced age of the prisoner (90 years)

was held to be a bar to capital or corporal punishment; and he was ordered to be transported again to the place whence he had returned. N. A. R. vol. 4, page 142.

2770. A convict who escaped, and returned from transportation to the place of his birth, was sentenced again to transportation for life with hard labor. One judge proposed death, but it was considered unnecessary and inexpedient. Another judge proposed that he should be sentenced, in addition to re-transportation, to be double ironed and kept to the hardest labor of which the system of jail discipline admits, for 2 years; but the other judges held that such a sentence was beyond their competency. Reports *L. P.* 1853, part 1, page 3.

Neglect of guards.

Punishment in cases of neglect, and of connivance;

2771. All guards of whatever description, having the custody of convicts who escape, and who appear on the magistrate's enquiry to have been guilty of wilful neglect, are to be immediately dismissed from the public service; and, should any connivance or further criminality appear against them, are to be committed or held to bail, according to the circumstances of the case, for trial before the sessions court, that, on conviction, they may receive the punishment which the law directs. *Beng. and Ben. Reg.* II. 1799, sect. 6. *Ced. Prov. Reg.* VIII. 1803, sect. 23.

whether before or conviction.
state how to proceed in cases of military guards.

2772. The above provision is extended to guards in charge of prisoners who escape from custody, whether before or after conviction; but is not applicable to military guards from the provincial battalions (while such battalions continue subject to military law) or from any regular corps of the army. Whenever it appears to the magistrate that a guard, furnished from any corps subject to martial law, has been guilty of wilful neglect in guarding the prisoners under his charge, or of connivance at the escape, or the attempt to escape, of any prisoner, or of any other act of a criminal nature in the discharge of his duty, the magistrate is to cause the offender to be delivered over to the officer commanding the detachment to which he belongs with a charge in writing, that he may be tried and punished on conviction by a court martial. *Beng. and Ben. Reg.* XI. 1806, sect. 10, cl. 2. *Ced. Prov. Reg.* VIII. 1805, sect. 14, cl. 5.

How far magistrate may punish in cases of gross neglect or connivance.

2773. A magistrate may punish a burkundaz found guilty of gross neglect or connivance in the escape of a prisoner by fine and imprisonment under the provisions of sect. 19, Reg. IX. 1807, instead of committing the case to the sessions under the above provision; but if he thinks the sentence which he is thereby authorized to pass insufficient, he should proceed to commit the offender. Const. Nos. 206 and 1131.

Magistrate cannot impose fine of more than one month's pay;

2774. A magistrate is not authorized under cl. 5, sect. 5, Reg. VIII. 1809, to adjudge a burkundaz, from whose custody a prisoner has escaped, to pay a fine equal to 3 months' salary. The court ordered the restitution of what had been levied exceeding one month's salary. Const. No. 192.

nor impose labor;

2775. A magistrate is not authorized under Reg. XIV. 1816, or any other enactment, to sentence to hard labor a burkundaz found guilty merely of neglect of duty, as in conniving at the escape of a prisoner. Const. No. 712.

nor additional im-

2776. As burkundazes, chokeedars, &c., found guilty of neglect of duty, were not formerly liable to stripes in addition to imprisonment, the provisions of Reg. II. 1834, in prohibiting the infliction of stripes, do not authorize an addition to the period of imprisonment to which they were liable previous to the issue of that enactment. Const. No. 923.

2777. The superintendent of police cannot exercise any authority over the guards of prisoners effecting their escape. Const. No. 1162. Superintendent of police has no power in such cases.

2778. The above provisions do not empower the magistrate to declare by a public order that such officer should never again be employed in the zillah courts in any capacity whatever. Const. No. 157. Magistrate cannot declare such officer ineligible for future employment.

SECTION VII.

OF LABOR, AND EMPLOYMENT OF CONVICTS.

2779. The officers in direct charge of jails are to receive, through the session judges, from the government, all orders regarding the employment of convict labor. C. O. Govt. Bengal, No. 1072, October 10, 1844, para. 3. To be directed by government.

2780. It is the bounden duty of the magistrates to enforce the due execution of the sentences passed on criminals, to take care that their labor is judiciously directed to objects of public benefit, and to prevent the periods of their confinement from being passed in ease and idleness. C. O. No. 158 of vol. 1. Duties of magistrate in regard to employment of convicts.

2781. Labor can form part of the punishment only when included in the sentence ; and therefore a magistrate has only to frame his sentences with or without it according to his own judgment. Resolution N. A. No. 292, April 3, 1846. *L. P.* be mentioned in the sentence.

2782. Three prisoners, sentenced to imprisonment without irons, and to labor inside the jail, petitioned to be allowed to work on the roads, and consented to wear fetters. It was held by the nizamat adawlut, that the local officers were not competent to make any alteration in the sentence passed on a prisoner. Const. No. 1005. No alteration can be made in sentence.

2783. There is no objection to session judges inserting an exemption from hard labor, in the warrants issued by them to the magistrate, in cases wherein they may, on consideration of the rank or situation in life of any person sentenced to imprisonment, consider him to be an improper object of hard labor. C. O. No. 44 of vol. 1. Judge sentence may exempt from labor.

2784. The practice of employing convicts in pulling punkahs, watering tatties, and similar menial occupations in public offices, is objectionable, and must be discontinued. Punkah-pullers hired in consequence of these orders may be charged for in a contingent bill. C. O. Govt. Bengal, No. 1203, July 9, 1851. C. O. Insp. Prisons *W. P.* No. 42, February 24, 1854.

2785. The employment of prisoners in repairing the public roads is consistent with the Mahomedan law ; and therefore all convicts sentenced to imprisonment [with labor] may be so employed, or in other similar public works, with an exception to any person who is incapable of labor from age, sickness, or other infirmity. C. O. No. 3 of vol. 1. All convicts may be employed on public works ;

2786. The practice of working on the roads every description of prisoners capable of labor, indiscriminately, not excepting those confined for short periods and slight offences, is very objectionable: magistrates should be careful not to employ in that manner persons unfit to be so exposed from their previous habits, or the nature of their offence. C. O. No. 217 of vol. 1.

Report to be made if any prisoner ought to be exempted from labor.

2787. But in case any convict sentenced to imprisonment should, from his rank and situation in life or otherwise, appear an improper object to be employed on the public roads, or other similar works, the magistrate is to report the same, with the circumstances of the case, for the special orders of the nizamat adawlut. C. O. No. 8 of vol. 1.

Prisoners may be

2788. Experience having shown that the labor of the prisoners, confined in the several districts throughout the provinces, can be turned to very beneficial account in various duties connected with the repair and construction of public buildings, the magistrates generally should furnish to the superintendents of civil buildings, and to the officers acting under them, the aid of such number of convicts as can be conveniently spared from other urgent public duties, with a view to diminish the expense of repairing and constructing jails, hospitals, cutcherries, and bridges, in the immediate vicinity of the stations at which works may be sanctioned by government. C. O. No. 196 of vol. 1.

and always in repairs of jails;

2789. In all cases of repairs, alterations, or improvements made in the jails, convict labor is to be used whenever practicable, in preference to free labor:—and in preparing estimates, the cost of each is to be noted. C. O. Insp. Jails *L. P.* No. 16, November 8, 1854.

in which case an account is to be kept.

2790. To enable the superintendent of civil buildings to judge of the degree in which the actual charges incurred in such buildings are reduced by the employment of convicts in each instance, the magistrates are to keep an accurate monthly account of the total number of convicts furnished by them for the duties in question. C. O. No. 196 of vol. 1.

Control over convicts may be vested in executive officer.

2791. It is competent to government to vest superintendents of roads and other public works, and their assistants, who have the direction of the labor of convicts, with such powers as may from time to time be deemed necessary, to enable them to exert an efficient control over the convicts and the guards employed with them. Reg. IV. 1833.

Feeding, &c. of in such

2792. Convicts placed under charge of executive officers are to be lodged and fed by them, but are to be supplied with clothing by the magistrates in charge of the jails from which the convicts are detached. C. O. No. 127 of vol. 3.

Rule when convicts are required to be supplied from other districts.

2793. Whenever it is necessary, under the orders of government, to collect any number of convicts together for the execution of public works, and such convicts cannot be supplied from the sudder station of the district in which their services are required, the superintendent of police is to make application to the government stating—the number of prisoners required,—the work on which it is proposed that they should be employed,—and the districts from which in their opinion they can be most conveniently supplied; and the government is to determine on the expediency of the removal of convicts, and to issue such instructions to the local magistrates as are deemed proper. Reg. XVII. 1816, sect. 18.

2794. But government is averse to the employment of parties of convicts at a distance from the sudder station excepting under very particular circumstances. When therefore the employment of such parties is of so much public use as to render it expedient to detach them, a report is to be made to government. C. O. Sup. Pol. *L. P.* No. 1 of 1844.

Special report to be made in such case.

2795. The government does not wish prisoners to be detached to work at a distance from the jail; as it is incompatible with proper prison discipline to keep the convicts in large gangs under native superintendence at a distance from the magistrate of the district. Improvement in prison discipline is an object of vast political importance, and far superior to the keeping up of roads; and it does not appear that the health of the prisoners can be better preserved on the roads than in the jails. (a) The ferry fund committees cannot expect, in addition to the annual surplus funds, what would be equal to a further large money assignment in the shape of convict labor. Government does not object for the present to the employment of as many gangs outside the jails as are absolutely required for repairing station roads, whence the convicts can return to be shut up at night; but the great body of the prisoners, especially those sentenced for serious offences, are to be kept strictly employed within the premises,—on remunerative work, if possible,—but, at all events, employed. When this plan is once enforced, a great saving will be effected by discharging the whole or the greater portion of the ticca guards; and there is no doubt that energetic and persevering magistrates will in time devise means for repairing station roads from the profits of convict labor without sending a single prisoner to work outside the walls. C. O. Sup. Pol. *L. P.* No. 766, April 2, 1844.

Employment of prisoners beyond the limits of the jail.

2796. During the unusually heavy rains of 1856, all out-door labor was prohibited, especially where cholera or any other serious epidemic prevailed, except in regard to works of absolute necessity, or which were required for sanitary purposes connected with the station. Magistrates were required to attend at once to every requisition of the civil surgeon for extra clothing, food, and the means of warding off approaching sickness, which he might deem absolutely necessary, unless in the exercise of their general control they should deem it inadvisable. C. O. Insp. Jails *L. P.* No. 51, September 20, and October 6, 1856.

Precautions against sickness caused by out-door labor during the rains.

2797. The practice of employing small gangs of prisoners in places of populous resort, unless the express sanction of government is previously obtained, is prohibited. Hitherto it has been customary to send small parties of 5 or 10 convicts into the crowded streets of cities, wherever the services of free laborers happened to be required. The number of burkundazes in charge of a gang of this strength being never more than two, it is obvious that no attempt to prevent communication between the prisoners and individuals in the surrounding crowd could be successful. The prohibition now issued is directed against the practice of allowing prisoners to work in situations which afford constant opportunities of communicating with passers by, unless the strength of the guard is sufficient for the prevention of this communication, and the nature of the locality such as to admit of its effectual enforcement. The prohibition must be considered to extend absolutely to the employment of

Small gangs of prisoners not to be employed in places of populous resort.

(a) The average mortality of out-door is probably not less than thirty per cent. greater than that of in-door laboring prisoners. C. O. Inspector Jails *L. P.* No. 51, September 20, 1856.

convicts in a narrow street, or in any market place, while the market is being held ; and also to the simultaneous employment of convict and free labor upon the same work. The introduction of a penal dietary has hitherto been productive of little effect in rendering the punishment of imprisonment more distasteful to those convicts, who are employed beyond the walls, in consequence of the facilities which are still afforded for obtaining prohibited indulgences. The strictest discipline, which is practicable, must be maintained among prisoners, working on the roads. C. O. Insp. Prisons *W. P.* No. 62 of 1855.

How far convicts
may be employed on
private works.

2798. Magistrates are prohibited from employing convicts under their charge upon any private works whatever, and are enjoined on all occasions to employ them upon public roads or works, under a sufficient guard for their safe custody ; except when during the rainy season they cannot be employed at a distance from the jails, and it is impracticable to employ the whole of them upon the public works, and when it would be expedient to employ a part of them on works combining public utility with private convenience which are undertaken by individuals. In such cases, the magistrate is to report to the session judge, and to state at the same time, any work or works undertaken, or proposed to be undertaken, by individuals, which promise to be productive of public as well as private benefit, and on which a part of the convicts might be employed with security ; and on consideration of such report, the judge is authorized to direct the employment of the convicts in the instances referred to, as may appear to him most advisable. C. O. Nos. 30 and 31 of vol. 1.

to use dis-
cretion in such cases
with caution ;

2799. The session judge is to exercise this discretion with great caution and consideration, giving always a preference to public works over those of a mixed description. C. O. No. 196 of vol. 1, para. 4.

and to report con-
travention of rule.

2800. The session judge is to bring under the notice of the magistrate, or if necessary of government, any instances in which he is of opinion that the convicts are employed, without competent authority, on works not strictly of a public nature. C. O. No. 196 of vol. 1, para. 7.

Prisoners not to
be let on hire to in-
dividuals.

2801. It is entirely contrary to rule to let on hire local convicts to private individuals. C. O. Govt. *Bengal*, No. 362, February 19, 1852. C. O. Insp. Prisons *W. P.* No. 17, August 28, 1848.

Not to be em-
ployed in station
gardens.

2802. The employment of prisoners to clear away jungle in the private premises at the station cannot be allowed. The magistrate is at liberty however to employ prisoners in cutting down jungle by the road side or in such other places as the medical officer may recommend. The government is decidedly averse to the employment of prisoners in agriculture or horticulture of any kind, the latter of which especially must be an agreeable occupation to many convicts, and by none can be felt as a severe punishment. The convicts are not therefore to be employed in station (branch agri-horticultural) gardens. C. O. Govt. *Bengal*, No. 1528, August 6, 1845.

Suggested rules
for working.

2803. The nizamat adawlut circulated in December 1818, certain suggestions for the working and employment of prisoners on the roads, in which also are enumerated the different articles with which the gangs should be furnished. But as they were never made imperative rules, it seems unnecessary to recount them at length. C. O. No. 211 of vol. 1.

2804. In the introduction of jail manufactures, officers in charge of jails should bear in mind—1, that the labor imposed be apportioned in fixed tasks, and be sufficiently severe to keep the prisoners actively employed throughout the day with necessary intervals for rest and meals:—2, that the labor be remunerative; that is, when the labor of each prisoner employed in it gives a clear profit equal to or greater than the entire cost to the state of such prisoner:—and 3, that it be not repugnant to the castes and religious customs of the prisoners. C. O. Govt. *Bengal*, No. 525, June 5, 1843.

Objects to be kept
in view in
introduction
of manufactures.

2805. C. O. No. 240 of vol. 1 contains an account of the measures pursued by a magistrate for employing the convicts in various manufactures in a manner calculated to give them habits of industry, and to meet in some degree the expense attending their imprisonment.

Employment in
manufactures.

2806. C. O. No. 101 of vol. 3 contains an account of the introduction of mills worked by convicts for the purpose of grinding atta for their own consumption, which system is recommended (in C. O. Nos. 78 *L. P.* and 88 *W. P.* of vol. 3) as a valuable means of providing a good nutritious diet in the place of adulterated food, and as a good way of employing convicts within the jail, in districts in which any considerable number of the prisoners use such food.

in flour mills;

2807. In C. O. No. 114 of vol. 3 *L. P.* is an account of the introduction of a paper manufactory into a jail, and of the process employed in the manufacture. Care should be taken to render all paper manufactured in a jail proof against the attacks of insects. Rice-sizing should be prohibited, as it breeds worms. The admixture of arsenic is recommended. Blue vitriol will keep away worms, but it makes the paper brittle. C. O. Govt. *Bengal*, No. 10, April 27, 1854.

in making paper.

2808. White arsenic should be used in the preparation of paper for the use of the government offices, as it is a more virulent poison than hural, and is therefore of more value in preserving the paper from the ravages of white ants and other insects. It acts as an irritant, when brought in contact with abrasions of the skin, sores, and the mucous membrane; but all bad effects are easily avoided by pounding it under water. Yellow arsenicated paper should be made for sale only when private customers are prejudiced in favor of it, and are not aware of its inferiority to that prepared with white arsenic. C. O. Insp. Jails *L. P.* No. 48, June 12, 1856.

White
arsenic to the
use in making paper.

2809. All weavers, instead of sitting upon the ground, with their feet in holes excavated in the earth, are to be furnished with raised seats. C. O. Insp. Jails *L. P.* No. 31, December 28, 1855.

Weavers to work
on raised seats.

2810. The practice of sending out convicts for the purpose of selling articles of jail manufacture is highly irregular. Articles of each kind of manufacture are to be exposed for sale (under the supervision of the darogah) at some convenient place outside, but close to the jail; and the magistrate is to affix there, as well as at the sudder thana, the cutcherries, and other public places, placards in the vernacular, indicating the different articles for sale and their price. C. O. Govt. *Bengal*, No. 718, April 15, 1853.

Convicts not to
be employed in hawk-
ing manufactures
for sale.

2811. When baskets are manufactured in jail, they should be accounted for in the manufacture accounts as any other articles of jail manufacture. If the baskets are used for public purposes, their estimated value should be credited as "value of articles consumed for public purposes," and the amount debited in the usual manner. C. O. Govt. *Bengal*, No. 13, October 18, 1854.

Jail darogah's
comm
seda
tures.

2812. Officers in charge of jails (except Alipore jail) are authorized to pay to the jail darogahs at the close of each official year a commission of 25 per cent. on the profits of the manufactures carried on under their superintendence. Such payments are subject to the correction of the accountant to the government of Bengal; and the amount in each instance is to be reported to the secretary to government in the form given below.(a) This commission is strictly limited to the proceeds of articles actually sold, or to the bona fide value of those consumed for public purposes; and articles remaining in store at the close of the year are not to be included in the calculation. The magistrate is to obtain the sanction of government before expending the balance of 75 per cent. on objects of local utility. C. O. Govt. Bengal, No. 1058, May 20, 1846; and No. 1155, June 30, 1851.

PART 1.—Statement of out-turn of manufactures in the jail of _____ during the year _____.

	Carpets.	Blankets.	Cloth.	Paper.								Total.
Receipts on account of products sold,												
Value of ditto consumed for public purposes,												
Total receipts,												
Add value of articles in store at the close of the year,												
Grand total,												
Deduct value of articles in store at the close of the preceding year, ..												
Gross receipts on account of current year,												
Charges incurred during the current year,												
Excess of receipts,												
Excess of charges,												

PART 2.—Abstract of prisoners' annual cost.

1.	ANNUAL EXPENDITURE ON ACCOUNT OF							9.	10.
	2.	3.	4.	5.	6.	7.	8.		
Daily average of criminal prisoners of all classes in jail and hospital.	Rations.	Money allowance.	Clothing.	Fixed establishment.	Extra guards.	Hospital charges.	Contingencies.	Total cost.	Annual cost of each prisoner.

PART 3.—Abstract of prisoners' employment during the year _____ and of their earnings.

DAILY AVERAGE OF PRISONERS.								NET PROFITS ON ACCOUNT OF PRISONERS.							
1.	2.	3.	4.	5.	6.	7.	8.	In Column 6.		In Column 7.		In Column 8.		15.	16.
Total sentenced to labor.	Inefficient from age or disease.	Employed as jail servants.	Working on roads.	Miscellaneous works.	Hired by department of public works.	Hired by any other department.	Employed in manufactures.	9.	10.	11.	12.	13.	14.		
								Total.	Annual average of each prisoner.	Total.	Annual average of each prisoner.	Total.	Annual average of each prisoner.	Total receipts as per columns 9, 11 & 13.	Annual average earning of each prisoner in column 1.

Bengal, January 29, 1851; and C. O. Govt. Bengal, No. 1455, August 9, 1851.

2813. No commission is allowed to jail darogahs upon amounts received from executive or any other public officers on account of labor of convicts hired out to them. C. O. Govt. Bengal, No. 1177, June 30, 1851.

Not to be calculated on sums received from convicts.

2814. The cost of any extra establishment, required to keep the accounts of jail manufactures, is to be defrayed by the darogah out of his percentage. C. O. Govt. Bengal, No. 1902, October 30, 1851.

Cost of extra establishments.

2815. The jail manufacture funds are to be expended in the conservancy and improvement of the sudder station, and not on works in the interior of a district, for which the ferry funds are available. C. O. Govt. Bengal, No. 1, August 11, 1853.

Application of profits of manufactures.

2816. In all cases, in which prisoners sentenced to labor are transferred from the subdivisions to the station jail, a proportion of the realized profits of the manufactures carried on in the jail is to be assigned to the sub-division, calculated according to the proportion which the laboring prisoners received from the sub-division may bear to the total number of laboring prisoners in the station jail. C. O. Insp. Jails L. P. No. 40, April 23, 1856.

Proportionate share of profits to be assigned to subdivisions.

2817. The magistrates are authorized, when they deem it advisable, to allow to each prisoner, as an incitement to industry, one half of the monthly produce of his monthly labor, over and above all allowances he would otherwise receive.(a) C. O. No. 252 of vol. 1.

One half of produce of labor may be allowed to prisoners.

2818. Quarterly returns are to be furnished to government showing in detail the manner in which all convicts not engaged in manufactures have been employed, and the estimated value of their labor, in the annexed form.(b) The value of the prisoner's

Quarterly returns.

(a) It would seem that this rule has been virtually repealed.

(b) Statement showing the employment of non-manufacturing prisoners in the jail of , and the estimated value of their labor, for the Quarter of .

1.	2.	3.	4.	5.			
Aggregate of the daily total number of laboring prisoners.	Aggregate of the daily total number employed in manufactures.	Aggregate of the daily total number not employed in manufactures.	Aggregate of the daily total number exempted from labor on account of sickness and holidays.	Employment of prisoners entered in column 3, and the estimated value of their labor.			
				Description of work.	No. of prisoners.	Daily rate per prisoner.	Value of labor.
	</						

N. B. The number entered in each of these columns is to be the aggregate sum formed by adding together the totals of each day during the quarter.
Whenever the value of the labor of prisoners employed as jail servants is not uniform, there should be separate entries for the different rates; as e. g.
Employed as jail servants.
00 Cooks at 2 annas.
00 Other servants at 1 anna.
and so

Repairing roads,
Digging tanks,
Cleaning the station, ..
Attending hospital, ..
Employed as jail servants,
Ditto as cooks,
Ditto as ———, ..
Ditto as ———, ..
Total, .
Average earning of each prisoner,
The value of the prisoners' labor is to be estimated with reference to the rate at which each description of labor is remunerated in the district.

labor is to be estimated with reference to the rate at which each description of labor is remunerated in the district. C. O. Govt. *Bengal*, No. 165, January 20, 1852, and No. 2, September 6, 1853.

Rules for more

within jails.

2819. Two cases of assault with severe wounding having been perpetrated in jail work-shops, the following instructions were issued to all officers in charge of jails, *W. P.* Although the implements commonly used in the manufactures, which are carried on within the jails, are not capable of being converted into weapons of offence with such murderous effect as the spades, pick-axes, &c., which are entrusted to convicts working on the roads, yet it must be borne in mind, that the greater strictness of the discipline within the walls, and the deprivation of all unauthorized luxuries and indulgences which are attainable by out-lying gangs of prisoners, renders the punishment of those confined within the prison far more severe than that which is enforced beyond its precincts. With increased severity of punishment, we must expect, and be prepared for, a more determined spirit of opposition on the part of the convicts, which must be met by a corresponding increase of vigilance and caution on the part of the guards. There are however strong reasons for apprehending, that the class of men now employed as contingent guards will never become trustworthy or efficient discipline officers. Their pay is so small, that no man possessing the requisite qualifications for discharging the duties of intramural guards would willingly undertake them for the same amount of pay, which he could obtain elsewhere without subjecting himself to the irksome confinement and personal risk which service in a jail must inevitably involve. It is, therefore, necessary to endeavour to obtain the services of persons of greater respectability by holding out such inducements of immediate high pay, with prospect of rapid promotion, as may more than counterbalance the disagreeable nature of the duty, and render the loss of appointment a serious punishment which would not lightly be risked. The following rules therefore have been sanctioned regarding the pay of contingent burkundazes employed in guarding prisoners at work within the jail walls. It must however be distinctly understood that no contingent burkundaz guarding prisoners at work beyond the jail walls will be entitled to the higher rate of pay. Whenever intramural labor is substituted for road or other out-door work, to an extent which enables the officer in charge of the jail to reduce his contingent guard from one man to every 5 convicts to one man for every 10 or more convicts, the rates of pay assigned to the contingent burkundazes permanently and continuously employed within the walls of the jail (designated the intramural contingent or discipline guard) are to be for one-third of their number 7 rupees, and for two-thirds 6 rupees per mensem. For every 10 burkundazes there is to be a duffadar upon 10 rupees; and for every 20 burkundazes a jemadar upon 15 rupees per mensem: and whenever the number of working prisoners permanently confined within the walls exceeds 250, there is to be a higher grade of officers to whom the general supervision of the work-shops shall be entrusted. The number and salaries of these officers will however be decided in each case with reference to the peculiar circumstances of the jail, and under the special sanction of government. In selecting the contingent guard for employment within the jail, it is necessary that care should be taken to appoint only those who have distinguished themselves by good service.—It must be remembered that these are the men upon whom the discipline, which is maintained within

Rate of pay of

guard.

contingent guard.

the jail, must in a great measure depend. They are constantly with the prisoners, and should be cognizant of all that passes. If they are trustworthy and vigilant serious breaches of discipline can hardly occur; if they neglect their duty, the utmost watchfulness on the part of the magistrate will be insufficient to counteract the pernicious effects of their misconduct. It is worthy of consideration whether the higher pay now allowed to intramural guards may not be beneficially held out as a reward to the best behaved men of the permanent guard. It is not desirable that a discretionary power of selecting the best men, wherever they may be procurable, should be taken from the officer in charge of the jail; but by promoting the permanent guard, where practicable, the advantage of having trained men throughout the jail will be secured; and, if any out-break among the prisoners should occur, the disciplined force which could be brought against them would be materially strengthened. C. O. Insp. Prisons *W. P.* No. 66 of 1855.

2820. Convicts at work on the roads, or in other public places out of jail, are to be employed, as far as possible, collectively, and never under the custody of a single guard; but are to be guarded by as many burkundazes as can be spared from other duties for the purpose. C. O. No. 18 of vol. 1.

Guarding of convicts employed on the roads.

2821. No prisoners are to be permitted to stop in a bazar or village. The prisoners are not to be permitted to have any intercourse with their female connections, or to receive any articles from them without the knowledge of the officer commanding the guard. The sepoy and burkundazes in charge of the prisoners, either at work or elsewhere, are to be enjoined to prevent, as much as possible, any person holding communication with the prisoners; and are always to report to the jailor when any improper or suspicious communication appears to have taken place, that the party may undergo a strict examination before his being shut up on re-admission into jail for the night. Jail rules, sect. 4, paras. 8, 9, and 10.

Not to be allowed to communicate with other persons.

2822. Persons sentenced to imprisonment by the magistrates are to be employed separately from prisoners convicted of crimes before the sessions courts, when at work on the public roads or other public works. C. O. No. 45 of vol. 1.

Certain prisoners to be separated during work.

2823. As to the mode of employment during imprisonment in all cases of misdemeanor, it is to be assumed as the principle on which the magistrates are to act, that in these cases, the reformation of the offender is the principal end in view, and not public exposure by way of example; the latter object being reserved for higher crimes. Accordingly, in each class of cases, a distinction should be made as to private and public labor: the private labor for cases of misdemeanor and minor offences, to consist of beating soorkee, making baskets, mats, bags, or any thing of easy fabric, in the jail or in some shed near it; while labor on the public roads, or on public works, is reserved for offences of more serious cast. It is not intended by these instructions, to lay down precise rules as to the mode of employment to be pursued by the respective magistrates; but to state the general principle of private labor, which it is desirable that they should adopt, leaving them to follow it up in such mode as their discretion, under local circumstances, may point out as practicable.

And distinction to be made as to public and private labor.

It rests with the magistrates, in convictions before themselves for petty theft, to direct private or public labor as the circumstances may seem to require ; adopting the first, however, in all practicable cases. C. O. No. 238 of vol. 1.

But discretion
allowed to magis-
trate.

2824. As there may be districts in which a strict adherence to the above suggestions is not advisable, the several magistrates are to exercise a sound discretion in awarding either description of labor, public or private, to the prisoners under their charge : and may employ them in manufactures or on the roads, as may seem most applicable to each case, without reference to the nature of the offence of which they have been convicted, provided their sentence has not specified any particular species of labor. C. O. No. 255 of vol. 1.

Rules for
of labor ;

2825. All the prisoners liable to hard labor are to be brought out of the jail by sunrise ; and they are uniformly to be conducted back to the jail soon enough to allow of their taking their evening meal, and of being mustered, searched, and properly secured before it is dark. Jail rules, sect. 4, para. 11.

of the convicts.

2826. Labor is to be exacted with due discrimination in regard to the seasons of the year and to the strength of the convicts. It is to be moderated or entirely remitted during an unusual degree of sickness. One hour's rest from labor is to be allowed in the middle of the day. On the first symptoms of illness of the convict during working hours, he should be sent immediately to the hospital. A convalescent period is to be allowed, at the discretion of the medical officer, to all convicts discharged from hospital. Some lighter labor than working on the roads should be devised for prisoners 60 years of age and upwards. Frequent inspection of the prisoners is to be made by the medical officer previous to their leaving jail, with a view of detecting prisoners laboring under illness, and of pointing out those incapable of much bodily exertion. C. O. No. 145 of vol. 3. *L. P.*

Special gang to
be constituted for
infirm and con-
valescent prison-
ers.

2827. With a view of better adapting labor to the physical power of the prisoners, by separating the weak from the able-bodied, an " infirm and convalescent gang" is to be constituted, consisting—1. of those prisoners who from age or bodily infirmity are physically unable to perform hard labor, who will be permanent members of the gang:—2. of those who are suffering from temporary debility, not amounting to disease, which requires admission into hospital :—3. of those who have been discharged from hospital as convalescent, and are unable for some days to perform hard labor. These prisoners are not to be excused *all* labor ; some light work should be apportioned to them, suited to their strength, within the precincts of the jail. A register should be kept of such prisoners in the following form :—

Register No. of prisoner.	Name of prisoner.	Date of admission.	How long to remain.	Date of discharge.	Order of civil surgeon or ma- gistrate.
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and none should be placed in, or discharged from, this gang, without the special order and signature of the magistrate, or under the directions of the civil surgeon. C. O. Insp. Prisons *W. P.* No. 5, July 1, 1847.

2828. The attention of the magistrate is particularly urged to the practice of meridian intermission of labor, of longer or shorter duration according to the season of the year; and to the system of classifying prisoners according to physical strength, a distinction being maintained between the kind of work assigned to the weak and aged, and that given to the robust. These precautions are closely connected with the internal economy and discipline of the jails, and well calculated to promote the health of those confined within their precincts. The magistrates are expected to communicate freely with the medical officers in charge of jails on these points, and to exercise a sound discretion in allowing a cessation from labor during the heat of the day, and in proportioning the amount and description of labor to the physical ability of those from whom it is exacted. C. O. No. 168 of vol. 3. *W. P.*

Meridian intermission of labor.

Labor to be fitted to physical strength.

2829. Except on urgent occasions, when the convicts engaged in the execution of any particular work cannot be dispensed with, they are not to be employed on Sundays; and, at all events, a part of every Sunday is invariably to be allowed to them and to their guards for the purpose of cleanliness. The magistrates are at the same time to be careful that this indulgence is not abused by any misbehaviour, and are to adopt such measures as appear best calculated to secure the due attainment of the object intended. It is also at the discretion of the magistrate to authorize an intermission of labor at the principal Mahomedan and Hindoo festivals, as far as appears indispensably necessary to enable the convicts to perform their religious ceremonies respectively, but not to any further extent than may be requisite for this purpose. C. O. No. 183 of vol. 1.

Not to be employed on Sundays; and native holidays may be allowed.

2830. Convicts under sentence of imprisonment for life in the Alipore jail, are not to be sent to work on the roads while they remain in the zillahs; but are to be kept in strict custody in the jails, until they are removed to the place of their ultimate destination. C. O. No. 117 of vol. 2.

Alipore jail.

Persons sentenced to imprisonment in, not to be worked on the roads before removal to.

2831. Persons sentenced to imprisonment for life in Alipore jail are on no account to be permitted to quit the area attached to the jail, except in cases in which sickness or accidents require that they should be taken to the hospital attached to the jail, and they are to be uniformly re-lodged within the jail whenever their health admits. Reg. XIV. 1811, sect. 2, cl. 3.

Persons sentenced for life not to leave the jail;

2832. Persons sentenced to imprisonment for life in the Alipore jail are to be employed in the manufacture of articles for which a constant demand exists at the presidency, or in such other labor as the superintendent of the jail directs, subject to any instructions with which he may be at any time furnished by government. Reg. XIV. 1811, sect. 2, cl. 4.

but are to be employed in manufactures therein;

2833. But the superintendent may employ convicts sentenced to imprisonment for life in that jail, and subject to hard labor, in the repair of the public roads, or in other public works beyond the area of the jail. He is to be careful to exercise this authority with due regard to the character and circumstances of the convicts, and to adopt suitable precautions to guard against their escape. Reg. IV. 1823, sect. 7.

but the superintendent may employ them on the roads.

SECTION VIII.

OF EDUCATION OF PRISONERS.

Education of
prisoners furthers
the object of im-
prisonment.

Course of study
prescribed for agri-
culturists ;

felons ;

and life prisoners.

Education is not
to involve any re-
laxation of sen-
tence.

and

Alphabetical and
multiplication
tables.

2834. A system of imparting the elements of sound education to convicts under sentence of imprisonment, was introduced under the orders of government uniformly into all the jails of the Western Provinces under the following rules. The primary object of punishment is to deter from the commission of offences by the infliction of a penalty, which may prove so highly distasteful as to operate more forcibly than the temptation to crime ; but, if in addition to this sense of fear, and without lessening its effect upon the community at large, any change can be wrought in the moral constitution of the offender, which may place him beyond the future influence of those inducements to crime, to which he previously yielded, the aim of the penal system will be most completely attained. The annexed scheme framed by the visitor general of schools contains a course of study adapted to each class of the prisoners. Under it the agriculturist, who has committed no offence involving a degree of moral turpitude, but has been sentenced to imprisonment for participation in party frays, is to receive the education which will confer the greatest amount of advantage after his release. The felon, on the other hand, after being sufficiently grounded in the elements to enable him to learn after release whatever may be most useful to him, will thenceforth, during his confinement, be restricted to the perusal of treatises, which will, it is to be hoped, tend to convince him of the advantages which are attained by refraining from offences injurious to society, and by obeying those laws which conduce to the general welfare. A special provision is, however, also made for giving suitable instruction to agricultural prisoners who may be placed in this classification, as not being entitled to admission into class 1st, alluded to above. In those jails in which life prisoners are confined, the restrictions to the acquisition of knowledge may be greatly relaxed in their favor. These men have in every case been convicted of the most heinous offences, and are dead to society ; but much may be done in the improvement of their moral sense to render them well conducted and useful inmates of the prison, within which their future lives are to be passed. The method by which the education is to be imparted does not contemplate the relaxation of any part of the sentence passed upon the criminal, which is, on the contrary, strictly to be refrained from, but merely the employment of that portion of his time, which is not occupied in hard labor, in the acquisition of knowledge which will prove a source of future and permanent benefit to himself. The first object in introducing the system is to provide the necessary instructors. It is probable that monitors capable of teaching reading and writing will be found among prisoners who have been sentenced for affrays, or other crimes involving no moral turpitude. The mode of teaching should be by assigning to each monitor a class of suitable size ; and the elements of reading, writing, and arithmetic will be best communicated by the use of the large alphabetical, and multiplica-

tion tables, which on application are provided by the central prison at Agra. It is absolutely necessary to the uniformity now sought to be introduced, that no books be admitted for educational purposes into the jail which are not found in the annexed tabular statement; and that constant attention be directed to the restriction of the use of the books, which are sanctioned, to the particular class of convicts for which they are designed. These books are furnished on application being made to the curator of government school-books at Agra, and should be indented for in Hindee or Oordoo in accordance with the prevalence of either language as the vernacular dialect of the district. The cost of books, alphabetical and multiplication tables, writing materials, &c., and, when necessary, the pay of instructors, is to be defrayed from the proceeds of convict labor, from which source officers in charge of jails are authorized to expend 5 rupees per mensem for every hundred prisoners under instruction.

Uniformity absolutely required.

Books.

be pro-

Course of Study for Jail Schools.

HINDEE.

1st Class.	2nd Class.	3rd Class.	4th Class.	Remarks.
I. Akshara dipiku (Primer) ; Bidyarthi ki pratham pustuk p. p. 10, 13, 20, 33; multiplication table (up to 16).	Ganit prakāsh Part I (Arithmetic); Kisanopadesh (advice to cultivators); Sūrajpore ki Kahani (a village tale).	Patra malika (letter writing); Kshetra Chanarika Part I (Mensuration); putwari's manual; map of the district (his own), and of Hindustan; Gouthan Sitla (a tale on vaccination).	Kshetra Chandrikā Part II; Gramya Kal-padrum (explanation of village institutions, accounts, &c. &c.); Shuddhi darpan (on cleanliness); Khagolsār, (solar system); treatise on cholera.	This course is for the instruction of agricultural term prisoners, who have been imprisoned for offences which are not ignominious.
II. Ditto.	Ganit prakash Part II; Dharm singh ka vrittānt (a moral tale); Buddhiphalodaya (do.)	Patra malika, (letter writing); Gyan chāllisi bibaran (moral couplets with commentary); Satya Nirūpan (on truth); map of the district (his own), and Hindustan; Gouthan Sitla.	Sikrhā manjari (self improvement); Shuddhidarpan; treatise on Cholera; Khagolsār.	This course is for the use of all other term prisoners. Any agriculturists who may be found in this division may be permitted to learn the treatise on mensuration, the putwari's manual, the explanation of village institutions, accounts, and the map of his own district, on being promoted to the 3rd class.
III. Ditto minus multiplication table.	Dharm singh ka vrittānt; Buddhiphalodaya.	Gyān chāllisi bibaran; Satya Nirūpan.	Ditto ditto and in addition, when the above are finished, Ishwarta Nidarshan (natural theology) &c.	This course is for life prisoners.

URDU.

1st Class.	2nd Class.	3rd Class.	4th Class.	Remarks.
I. Tashīl ut-tālim, (primer) ; multiplication table (up to 16).	Mubadi-al-hisab (arithmetic) Part I; Pand-nāmūh-i-kūshkārān, (advice to cultivators); Kissah-i-Sūrajpur.	Inshāi Khirad afroz; Misbah-ul-Masāhat (mensuration) Part I; map of the district, and Hindustān ; put-wārī's manual; Gouthan Sitla.	Misbah-ul-Masahat PartII; Kitab-halat-i-dehī (explanation of village institutions,accounts,&c.); Khulasah-i-Nizām-i-Shamsī (solar system); Tālim-ul-nafs (self improvement); treatise on cholera.	As above in Class I.
II. Ditto.	Mubadi-ul-hisab Part I; Kissah-i-Dharm Singh; Kissah-i-Subuddhi.	Inshai Khirad afroz; Tālim-ul-nafs; map of district ; Gouthan Sitla.	Khulāsah-i-Nizam-i-Shamsī; Khiyālāt-us-Sānaya; Muzhari Kudrat; treatise on cholera.	As above in Class II.
III. Ditto minus multiplication table.	Kissah-i-Dharm Singh; Kissah-i-buddhi.	Talim-ul-nafs.	Kheyālāt-us-Sānaya; Muzhari Kudrut.	As above in Class III.

C. O. Insp. Prisons *W. P.* No. 56, July 11, 1854.

Statements to show what instructions prisoners have received, and the proportion of previous convictions.

2835. Magistrates are required as soon after the close of the calendar year as possible to fill up and return to the inspector of prisons the subjoined statements, which are intended to exhibit the extent to which convicts have received instruction, and the proportion of prisoners who have previously been convicted.

Statement shewing the degree and extent of education among the convicts of the district on the 31st December, 185 .

1.	2.	3.	4.	5.	6.	7.	8.	9.
Name of District.	Number of convicts.	Number of those who can read and write.	Number of those who can read only.	Number of those who can write only.	Number of those who can neither read nor write.	Number of those who have learned since their conviction		
						to read.	to write.	to read and write.

A. B.,
Magistrate.

Statement shewing the number of prisoners in the district who have been previously convicted.

1.	2.	3.	4.	5.	6.
Name of district.	Number of prisoners.	Never before convicted.	Once convicted.	Twice convicted.	Frequently convicted.

A. B.,
Magistrate.

C. O. Insp. Prisons *W. P.* No. 69 of 1855.

SECTION VIII.

OF JAIL OFFICERS.

2836. The magistrate is empowered to appoint fit persons to the situations of jailor and other subordinate officers of the criminal jail, and to remove such officers for misconduct, incapacity, or other sufficient cause, without reference to other authority. Reg. XVII. 1816, sect. 7, cl. 2.

Magistrate may appoint and remove officers,

2837. As the magistrate is responsible for the safe custody of the dewanny as well as the foudaree prisoners, the appointment and removal of native officers attached to both jails is vested exclusively in him. Const. No. 442.

of both civil and criminal jails.

2838. The magistrate is to record upon his proceedings the grounds upon which any such officers are removed by him ; and to select proper persons to fill all vacancies in the situations of such officers ; and to continue in office the persons appointed, whether by himself or by his predecessors, whilst they discharge the duties assigned to them with diligence and integrity. Reg. XVII. 1816, sect. 7, cl. 3.

Grounds of removal to be recorded, and proper persons selected.

2839. The magistrate is to report to the session judge whenever he appoints a jailor, specifying his name, age, past employments, character, and qualifications. Reg. XVII. 1816, sect. 7, cl. 4.

Report of appointment to be made to judge.

2840. Security should be taken from jail darogahs according to the amount or value of the money or property that may be entrusted to them. The rules laid down for taking security from treasurers or nazirs* are to be observed ; but the annual report of the revision of the security is to be forwarded to government. C. O. Govt. *Bengal*, No. 1121, September 10, 1850.

Darogah to give security.

* See para. 2510.

Officers dismissed may petition the judge ;

2841. In the event of a jailor deeming himself aggrieved by any order passed by a magistrate with respect to his dismissal from office, he is at liberty to present a petition to the session judge, setting forth the circumstances of his case and grounds of complaint. Reg. XVII. 1816, sect. 7, cl. 5.

who is to call for proceedings, if he thinks proper.

2842. On the perusal of such petition the judge may, if he deems proper, require the magistrate to submit the proceedings holden on the case for his inspection accompanied by any explanation in the English language, which he is desirous to offer. Reg. XVII. 1816, sect. 7, cl. 6.

No appeal lies of right to judge or other authority.

2843. The control of jail establishments being by Act XVIII. 1844 vested exclusively in the government, the dismissal or suspension of any person holding an office in the jail establishment by the magistrate has been declared final in the Western Provinces ; and no appeal lies of right to the session judge or any other authority. If the inspector of prisons however or the government see cause for interference, the magistrate's sentence will be liable to revision. Govt. Order *W. P.* No. 3824, September 21, 1853.

Orders of magistrate final ; but judge may submit proceedings to government.

2844. Orders of magistrates for the dismissal of officers of the jail establishment are final : but if, after consideration of the papers furnished, the session judge is of opinion that the powers, vested in the magistrate by these provisions, have been perverted, he is to submit the proceedings to government. Reg. XVII. 1816, sect. 7, cl. 7. C. O. Govt. *Bengal*, No. 1072, October 10, 1844, para. 8.

Session judge or nizamut adawlut may order dismissal in certain cases.

2845. The above provisions do not preclude the session judge or the nizamut adawlut from ordering the removal of any jail officer, who is convicted of a criminal offence declared punishable by dismissal from office, or, though not so expressly declared, if the conduct of such native officer appears, from any proceeding before the sessions court or the nizamut adawlut, to be such as to require his removal from the public situation held by him. Reg. XVII. 1816, sect. 7, cl. 8.

Discontinuance of temporary establishments.

2846. Report is always to be made to the inspector, when a temporary establishment, which has been sanctioned for an indefinite period, is discontinued. C. O. Insp. Jails *L. P.* No. 49, June 24, 1856.

Magistrate to prevent maltreatment of prisoners by native officers.

2847. The magistrates are to be careful to prevent any maltreatment of prisoners by any of the native officers attached to their respective jails, or in charge of prisoners employed on the public roads. All complaints of prisoners against the officers having charge of them are to be immediately inquired into by the magistrates ; and, if proved to be well founded, the offenders are to be liable to immediate dismissal ; besides a fine not exceeding one month's salary, or imprisonment not exceeding six months. Reg. XIV. 1816, sect. 9, cl. 2.

Military guards how to be punished.

2848. It is not of course intended that the foregoing rule should be considered applicable to any military guards, sepoys, or officers, or to persons of any denomination, who are subject to a military tribunal. In the event of any such persons being guilty of a neglect of duty, or other misconduct involving an offence cognizable by a court-martial, whilst

employed in the custody of prisoners, the magistrate is to continue to observe the rule prescribed for such cases in sect. 10, Reg. XI. 1806.* Reg. XIV. 1816, sect. 9, cl. 3.

* *v. paras.* 289 and 290.

2849. Jailors are included in the list of public servants entitled, under the existing pension rules, to a superannuation pension. C. O. No. 179 of vol. 3.

Jailors are entitled to pension.

2850. The strength of the jail guard is determined on a calculation of 4 men to every sentry posted at night, and one-third over and above as a reserve and for drill. To every 25 men, and for every broken number less than 25, there will be a duffadar; and for every jail one jemadar and one naib jemadar. The extra guards required for laboring prisoners are to be ordinary burkundazes. The men of the guard are to be armed, accoutred, and clothed, as the men of the late police battalion. The pay of the guard is to be—jemadar 16, naib jemadar 12, duffadar 8, and sepoy 5 rupees. But no officer is to be placed on the guard who is not well acquainted with the drill; and no sepoy is to receive more than 4 rupees, till he is pronounced to be sufficiently instructed therein. Indents for such arms and accoutrements, as are absolutely necessary, are to be made once in the year, and the cost of these articles is to be borne by the jails. Indents for ammunition should be at the rate of 30 balled cartridges and 80 of blank ammunition per man per annum. The one-third of the guard, who are off duty, are to be regularly drilled by their own officers, or by drill instructors drawn from regiments at the same or neighbouring stations. If such drill instructors are required, they should receive their marching batta during the time they are employed; and this may be charged in the contingent bill of the jail. The men should be taught the manual and platoon exercise, and only the simplest manœuvres; and should always have target practice. The whole expense of the jail guard is to be charged against the jail; and the guard is entirely subordinate to the inspector of prisons in every respect. C. O. Insp. Prisons *W. P.* No. 8, October 27, 1847.

Formation of jail guards.

Arms.

Pay.

Indents.

Drill.

2851. Jail burkundazes when sent in charge of prisoners to districts other than that in which they are employed, are to receive travelling allowance at the rate of three-tenths of their salary. C. O. Govt. *Bengal*, No. 1307, July 4, 1853.

Travelling allowance of burkundaz.

2852. Whenever a magistrate has occasion to submit an application for leave of absence from a medical officer in charge of the jail or station, he is at the same time to report what arrangements it is proposed to make for the charge of the medical duties during his absence, and whether he considers those arrangements sufficient. C. O. Govt. *Bengal*, No. 5, November 10, 1853.

Applications for leave of absence from medical officer in charge of jail.
Expense.

2853. Every magistrate is empowered, on the recommendation of the civil surgeon, and without reference to government, to grant leave of absence to any native doctor, attached to a station or sub-division subordinate to him, for any period not exceeding six months on private affairs, and not exceeding one year on account of sickness duly certified. Application for leave of absence is to be made by the native doctor to the civil surgeon of the district, who, if he think proper, may refuse the application. If, on the other hand, the civil surgeon is of opinion that the leave, or any part of it, should be granted, he will forward it to the magistrate of the district, enclosed in a letter from himself, stating the cause of the appli-

Rules for giving leave of absence to native doctors.

cation and the grounds of his recommendation. The magistrate may refuse to give leave on private affairs, if it cannot be granted without public inconvenience. Leave granted by a magistrate under this rule is to be reported to the superintending surgeon of the division. A native doctor absent from his station on leave, from whatever cause, shall suffer, during the period of his absence, a deduction of so much of his salary, not being less than one half, as may be requisite to procure the services of an efficient substitute. If the absence of a native doctor require that provision should be made for the discharge of his duty during his absence, or if a vacancy occur in any other way, the magistrate is to apply to the superintending surgeon for the appointment of a person to fill the situation either temporarily or permanently as the case may be; and the superintending surgeon, or, if necessary, the medical board, is hereby authorized to comply with such application. Govt. *Bengal*, No 47, Dec. 15, 1852.

Their emolu-
ments.

2854. Recommendations made by the magistrates touching the emoluments of the subordinate medical officers, are to be submitted, through the regular channel, to the medical board direct. C. O. No. 63 of vol. 3. *W. P.*

Pay of native
second-

2855. If a native doctor of the secondary class is attached to a jail or civil station, in cases where the fixed establishment does not provide the full amount of pay to which the native doctor is entitled by his standing, the magistrate is to charge such amount of pay, as he may be entitled to, in the establishment bill; specifying that the officer charged for is a native doctor of the secondary class, and quoting the date of the order by which he is attached to the station. C. O. Govt. *Bengal*, No. 14, November 1, 1854.

Removal of

2856. Native doctors are not to be held liable to summary removal from their appointments by the local authorities, except with the concurrence of the superintending surgeon of the circle. On the occurrence of any vacancy in that class of public servants, the civil surgeon, to whom the native doctor is immediately subordinate, should report the same to the superior medical authorities, with a view to the vacancy being supplied. C. O. Govt. *Bengal*, No. 30, November 14, 1855.

SECTION IX.

OF CUSTODY OF PRISONERS UNDER EXAMINATION.

Prisoners to be
sent to the jailor
with a chalan.

2857. On the apprehension of prisoners at the sudder station, as well as on the arrival of prisoners sent in by the police darogah, they are to be delivered over to the jailor with a chalan, under the signature of the magistrate or his assistant, specifying their names, the charge or information on which they have been apprehended, in what apartment of the jail,

or with what description of prisoners, they are to be confined, and whether they are to be secured with ropes or fetters. Jail rules, sect. 2, para. 3.

2858. The jailor is to carry the terms of the chalan into execution, and is to take every possible precaution for preventing the prisoners under examination from associating and conversing with the convicts in the jail. Jail rules, sect. 2, para. 4.

Jailor to execute the terms of the chalan.

2859. All prisoners detained under examination are to be confined in a distinct apartment, or apartments, of the regular jail. Jail rules, sect. 2, para. 2.

To be in a distinct apartment.

2860. Prisoners are not to be kept in the nazir's house, until they find security, or until orders are passed upon the report of the darogah accompanying such as are sent in by the police. C. O. No. 47 of vol. 2.

Not to be kept in nazir's house.

2861. When accused persons, who have confessed in the mofussil, are forwarded by the police, they should not be allowed to mix with the prisoners in the common jail previous to their examination by the magistrate, lest they should be put upon their guard by them, and consequently decline to make any confession or discovery. On the other hand, the magistrate must be watchful that prisoners are not subjected in the jail, or other places of confinement, to any continuance of the improper means which may have been used by the police to extort confessions. C. O. No. 73 of vol. 1.

To be kept separate from all others, if they have confessed in the mofussil.

2862. As the only object of keeping in custody prisoners committed to the sessions is to secure their appearance at the time of trial, the magistrate is not to confine in fetters any such person who is charged with a bailable offence, and committed to prison from inability to find bail; or who, though not admitted to bail, is not charged with a heinous offence, such as from the circumstances and nature of the case, considered with the prisoner's condition of life, appears to render the use of irons indispensably necessary for his secure custody. C. O. No. 40 of vol. 1.

Imposed only in heinous cases;

2863. Under this rule prisoners committed on a charge of burglary may be confined in irons, as that offence is of a heinous nature; but the magistrate should use his discretion in such cases, according to the nature of the offence charged, and the character and circumstances of the individual prisoner, having in view merely to ensure his safe custody. C. O. Nos. 206 and 210 of vol. 1.

and not always in such cases;

2864. This measure, however, should be resorted to only in extreme cases, or where the prisoner is of a character so dangerous as to render the imposition of fetters absolutely necessary to his safe custody; and the magistrate is always to record on his proceedings of commitment his reasons for resorting to the measure, whenever he deems it necessary to place fetters on a prisoner previous to his trial. C. O. No. 32 of vol. 2.

only in special cases.

2865. Whenever the attendance of any prisoners in the jail is required at the magistrate's cutcherry, the nazir is to send a list of their names, under his signature, to the jailor; and the jailor is to deliver the prisoners mentioned in the list to the charge of the officer sent for them, with a sufficient guard for their security. Jail rules, sect. 2, para. 5.

Rule when prisoners are required in the magistrate's court.

2866. A register of all sentences is to be kept in the annexed form(*a*) in which is to be entered at the time of issue every penal sentence. It is always to lie on the table, and each sentence is to be immediately entered and attested therein. Before the court closes the sentence is to be transcribed into a purwana, signed by the judicial authority, and countersigned by the serishtadar and nazir with the date of issue, and immediately transmitted with the prisoner to jail. Another register is to be kept in the annexed form(*b*) of all prisoners under examination; and each name is to be retained until the final order of sentence or acquittal be passed. No prisoner is to be received as sentenced without a warrant of imprisonment; but the jailor on admitting a prisoner will strike his name from the register of persons under examination. The English warrants of the judge are to be retained in the mohafez-dufter. C. O. Insp. Prisons *W. P.* No. 3, August 28, 1845.

And a register of prisoners under examination.

(a) *Register of warrants of release, sentence, and commitment, issued daily by magistrate and his subordinates.*

[illegible]

Register of prisoners under examination and commitment for trial.

[illegible]

SECTION X.

WARRANTS FOR EXECUTION OF SENTENCE.

2867. A warrant of release should always be issued by the session judge on the acquittal of a prisoner, even though he has been convicted in another case, in order to preserve regularity in the office of the magistrate. N. A. R. vol. 2, page 10.

Warrant to be issued for release.

2868. In all cases in which the judge passes final sentence without reference, the warrant to the magistrate for carrying the sentence into execution should be issued within two days from the close of the proceedings. C. O. No. 119 of vol. 2.

Judge to issue within 2 days after sentence.

2869. All warrants for the execution of sentences should be addressed to the chief magisterial authority of the district, whether he is denominated magistrate, or joint magistrate, although the prisoners were committed for trial by subordinate officers exercising the full powers of magistrate. Const. No. 847.

All warrants to be addressed to the magistrate.

2870. The session judge is invariably to insert in the warrants in words as well as in figures the period of imprisonment, to which the prisoners thereby affected are sentenced; and at the same time to note on the margin of the warrant the prisoner's name, and the period of imprisonment in figures. C. O. No. 67 of vol. 2.

Period of

2871. The session judge is invariably to specify the date of the sentence, passed by the nizamat adawlut, in the warrant issued by him for carrying it into execution. C. O. No. 151 of vol. 1.

Date of sentence by nizamat adawlut to be noted.

2872. When a prisoner has not been apprehended until some time after the date of his sentence, the magistrate is to make a special report to the nizamat adawlut, through the session judge, for their orders regarding the date from which the period of imprisonment is to be reckoned. N. A. R. vol. 3, page 49.

If prisoner has absconded.

2873. All warrants are to be returned to the court by which they were issued, after the complete execution of the sentence contained in them, with an endorsement certifying the manner in which the sentence has been carried into execution. In the case of a sentence both for corporal punishment^(a) and imprisonment, the carrying into execution of the former part of the sentence should be endorsed on the warrant at the time of inflicting the punishment; but the magistrate is to retain the warrant until the expiration of the term of imprisonment: or to return it duly endorsed, should the prisoner die during the course of the term: or, in the event of his being removed to another zillah, the warrant is to be transmitted to the magistrate of the zillah to whom the prisoner is sent, with information that he is to return it duly endorsed on the expiration of the sentence or death of the prisoner. C. O. No. 34 of vol. 1.

All warrants to be returned after execution.

How to be endorsed.

(a) Corporal punishment can now be inflicted only by a magistrate; and no other punishment can be superadded. But this rule is applicable to cases in which a fine is included in the same sentence with a term of imprisonment.

hereby ordered, that execution of the said sentence be made and done upon the said without delay, as commanded by the regulations, and that you do return this warrant, when completely executed, with an endorsement attested by your official seal and signature, certifying the manner in which the sentence has been carried into execution. Herein fail not.

lut," when the sentence has been passed by that court.

Given under my hand and the seal of this court, this day of in the year 185 .

No. 6.

Court of Sessions
Trial No. of Calendar
Session

To , Esquire,

Magistrate of

Whereas at a general jail delivery of for the holden at on the day of the month of in the year 185 , has been convicted of and sentenced* to be imprisoned without irons for years from this date and to pay a fine of rupees on or before the or in default of payment to labor until the fine be paid or the term of sentence expire : it is hereby ordered, that execution of the said sentence be made and done upon the said without delay as commanded by the regulations, and that you do return the warrant, when completely executed, with an endorsement attested by your official seal and signature, certifying the manner in which the sentence has been carried into execution. Herein fail not.

Warrant of sentence of punishment when labor is redeemable by a fine.

* Add words "by the nizamat a lut," when the sentence has been passed by that court.

Given under my hand and the seal of this court, this day of 185 .

No. 7.

Court of Sessions
Trial No. of Calendar
Sessions

To , Esquire,

Magistrate of

Whereas at a general jail delivery of for the holden at on the day of the month of in the year 185 , charged with , has been tried and sentence of acquittal has been passed* upon the said : it is hereby ordered, that the said be released, and that you do return this warrant to me with an endorsement, attested by your official seal and signature, certifying the manner in which the sentence has been executed. .

Warrant of acquittal.

* Add words "by the nizamat a lut," when the sentence has been passed by that court.

Given under my hand and the seal of this court, this day of in the year 185 .

SECTION XI.

OF EXECUTION OF SENTENCE.

Capital punishment.

Copy of sentence to be sent to magistrate.

Discretion allowed to magistrate as to time.

But judge to report extraordinary delay.

Warrant to be returned if execution is delayed beyond the specified time.

Place of execution.

May be at out-station.

to be obeyed if the execution takes place away from the out-station.

Disposal of bodies, which are never to be gibbeted.

2878. In all cases of capital punishment, copies of the sentences of the court of nizamat adawlut should be transmitted to the magistrate, together with the warrants for the execution of the prisoners. C. O. No. 32 of vol. 1.

2879. In issuing warrants for capital sentences to the magistrates, a discretion should be left with them, in regard to the period for carrying such sentences into execution, in the warrants, specifying on or before a certain date. C. O. No. 103 of vol. 1.

2880. The session judge is invariably to report, for the orders of the nizamat adawlut, any extraordinary delay which occurs in carrying into execution a sentence of capital punishment. C. O. No. 286 of vol. 1.

2881. Whenever a magistrate has occasion to postpone the execution of a convict sentenced to suffer death beyond the period fixed in the original warrant, he must return such warrant to the session judge with a report of the circumstances of the case; and wait the receipt of a second warrant, or an order endorsed upon the first by the session judge, containing a definite date for carrying the postponed sentence into effect. C. O. No. 305 of vol. 1.

2882. All executions are to take place at the sudder station of the officer to whom the warrant is directed, unless expressly otherwise ordered in the sentence of the nizamat adawlut. The magistrate, or his assistant, covenanted or uncovenanted, is to be present at every execution, whether at the sudder station or in the interior. C. O. No. 42 of vol. 4.

2883. If the crime was committed within the jurisdiction of an outstation, the capital sentence should be carried into execution at such out-station. C. O. No. 975, August 2, 1854. *W. P.*

2884. Whenever a convict is sent to any distance from the jail for execution, the magistrate is to appoint a sufficient guard for his safe custody, and is to be careful to prevent any exactions from the inhabitants of the country at the place of execution: and, with a view to prevent offence against the prejudices of the natives, the court direct that no criminal be executed within any town, village, or other inhabited place; or so near to the house of any individual as to afford just ground of complaint. C. O. No. 65 of vol. 1.

2885. The bodies of criminals are not to be exposed on gibbets after execution, but are to be burnt or interred, unless claimed by the relations or friends. It is discretionary with the magistrate to dispose of the body in either of these modes most consonant with the customs of the tribe and caste of the sufferer. C. O. No. 140 of vol. 2.

2886. Malefactors are to be executed on a drop according to the pattern prescribed by the nizamat adawlut; its construction and use are to be clearly explained, lest any misapprehension should be the cause of unnecessary and protracted suffering. The practice of hamstringing criminals, whether before or after execution, is prohibited; and magistrates are to be careful that all other practices are abstained from, which tend to diminish the solemnity of the proceeding, and the awe, which it is the primary object of the punishment to create in the minds of all who witness it. C. O. No. 53 of vol. 2.

Pattern of drop to be used.

* Certain practices prohibited.

2887. So, the practice of allowing music, money, and other indulgences, to persons led to execution is interdicted; but, if the criminal is not possessed of decent clothes, he is to be invariably supplied with a suit and a cap. C. O. Nos. 177 *W. P.* and 182 *L. P.* of vol. 3.

Clothes to be supplied if necessary.

2888. In order to prevent undue haste or carelessness on the part of those charged with the duty, in taking down the body before life is extinct, and the consequent necessity of again suspending it,—it is directed that the body of a person sentenced to death is invariably to be allowed to remain suspended for one hour at least, and that it is not even then to be removed until death is ascertained to have taken place. The Western court also requires that an officer of the medical department should be required to attend in every instance for the purpose of certifying that death has taken place before the body be removed. C. O. No. 18 *W. P.* and No. 19 *L. P.* of vol. 4.

Body to remain suspended until death.

Presence of medical officer.

2889. As it is impossible to render the printed form of warrant applicable to every case of male and female convicts, the session judge is to be careful in each instance to make such alterations as may be necessary, according to the terms of the sentence, to which the warrant should of course conform as exactly as possible. C. O. No. 180 of vol. 1.

Form of warrant to be adapted to each individual case.

2890. Warrants for capital punishment, when duly executed, are to be endorsed in the following form:—"I hereby certify that the sentence of death passed on A. B., son of C. D., has been duly executed, and that the said A. B., son of C. D., was accordingly hung by the neck till he was dead, at the town of Sylhet, on Saturday, the first day of May 1857. I further certify that the body of the said A. B., son of C. D., was afterwards burnt [or buried, or given to his relations or friends, as the case may be]. Given under my hand and the official seal of this court, this 5th day of May 1857. (*Signed*) J. S. Magistrate." C. O. Nos. 260 and 266 of vol. 1.

Form of endorsement of warrant after execution.

2891. In the generality of accidents proceeding from the breaking of ropes made use of to hang criminals, the contingency is the result of a want of management and due care and foresight on the part of the officers charged with the execution of the sentence, to whom it cannot but be regarded as exceedingly discreditable. Its effect is equally injurious and to be deprecated, whether the accession of physical suffering caused thereby, or the disturbance of the solemn impression meant to be conveyed and of the operation of the spectacle as a moral example, be considered. Each certification of the execution of a capital sentence is therefore to include an announcement of no accident, error, or other misadventure having occurred; any occasion of the occurrence of such contingency, with a statement of its cause,

Magistrate to certify that no accident has occurred; or the cause of

of the party to whose fault it was owing, and of the steps taken in consequence, is to be duly notified in the return warrant. C. O. No. 99 of vol 3.

Form of endorse-
ment to be used
in W. P.

2892. The following uniform wording has been prescribed in the Western Provinces for the form of endorsement to be made by magistrates on capital warrants certifying execution of the sentence; and the sessions judges are to satisfy themselves that the certificate has been properly recorded, before returning the executed warrant to the court, and to bring to notice any irregularities. "I hereby certify that the sentence of death, passed on son of _____ by the nizamut adawlut, has been duly executed; and that the said son of _____ was accordingly hanged by the neck till he was dead at _____ on the _____ 185 _____. I further certify that the body of the said _____ remained hanging one hour, and that the medical officer in attendance certified complete extinction of life prior to its removal; and that it was afterwards burned (or buried, or delivered to relatives, as the case may be) not having been claimed by his relations, and that no accident, error, or other misadventure occurred during the execution." C. O. No. 601, May 18, 1854. W. P.

Rule where a fe-
male criminal is
executed.

2893. In the instance of female criminals capitally sentenced, provision is always made in the order of the nizamut adawlut, for the possible contingency of their pregnancy. The certificate of execution of a pregnant female is to be recorded as follows:—"I hereby certify (*as above*); and that the said Mussumat _____, not having been found pregnant [or having been found pregnant, and reprieved till forty days after delivery,—*as the case may be*] was accordingly hanged, &c. (*as above*)." In the event of pregnancy being declared, that fact, as certified by the medical officer, is always to be noted on the warrant of the sessions court, which is to be returned by the magistrate for the sessions judge to endorse thereon the suspension of execution of the sentence for the period indicated. C. O. No. 1405, November 16, 1854, W. P.

Warrants to be
forwarded to the
nizamut adawlut
after execution.

* See para. 1487.

2894. By sect. 78, Reg. IX. 1793* warrants for capital punishment are to be transmitted, after being carried into execution, to the nizamut adawlut. Session judges are to pay strict attention to this rule, and to forward the death warrants immediately on the receipt of them from the magistrates. C. O. No. 134 of vol. 2.

Corporal punishment.

Prisoners always
to be examined by
the surgeon pre-
to punish-
by stripes,
: para. 2726.

2895. All prisoners are to be examined by the surgeon of the station (or in his absence by the native doctor) previous to their being flogged; and the punishment is to be postponed of any prisoner, whom the surgeon considers in too infirm a state to receive it, as long as he may judge necessary. The native doctors attached to the jails of the several stations are to be present on all occasions, when prisoners are flogged; and the punishment is to be stopped at any stage of it, if the native doctor is of opinion that the infliction of the remaining stripes will endanger the prisoner's life; in which case, the remainder of the punishment is to be postponed until the surgeon of the station considers the prisoner capable of sustaining it. C. O. Nos. 10 and 12 of vol. 1.

the ma-

2896. All prisoners sentenced to be flogged should be brought before the magistrate immediately previous to the infliction of the corporal punishment, that he may,

by personal observation, and a reference, if necessary, to the surgeon of the station, satisfy himself that the prisoner does not labour under any bodily infirmity, and that his general state of health at the time is such as to render him capable of sustaining the punishment without the probability of endangering his life. C. O. Nos. 118 and 316 of vol. 1.

2897. No female is to be sentenced to corporal punishment by stripes. The ratan is the only instrument to be used in the infliction of corporal punishment by stripes; and the sentences and warrants are to direct the same accordingly. Reg. XII. 1825, sects. 3 and 4.

Not to be inflicted
Ratan only to be used.

2898. When a prisoner is flogged, he is to be tied to a whipping post constructed in such manner as to secure him from receiving any part of the blow on the fore part of his body; and the striker is to be positively enjoined to strike the prisoner on the back only. C. O. No. 10 of vol. 1.

Whipping how
to be inflicted.
See para. 2726.

2899. In order to prevent the detention of prisoners in the jail beyond the period of their sentences, all prisoners sentenced by the sessions courts, and also those sentenced by the nizamat adawlut, to imprisonment for a limited period, are, when their sentence is explained to them, to be furnished with a certificate signed by the magistrate, and sealed with his official seal, shewing the name, age, and personal description of the prisoner, the crime of which he is convicted, the period of imprisonment to which he is sentenced, the date of the warrant, and the date on which the period of the sentence will expire. C. O. Nos. 292, 294, and 295 of vol. 1.

Certificate
of sentence to be
given to prisoner :

2900. The magistrates are to cause prisoners to deliver up, on their discharge, the certificates granted to them at the time of their sentences; as well as to be careful that such certificates are taken back and destroyed in cases of death before the expiration of the sentence. C. O. No. 294 of vol. 1.

which is to be
returned in case of
death or expiry of
sentence.

2901. When the sentence passed on a prisoner is mitigated, the magistrate is to recall the original certificate; and, on explaining to him the mitigated sentence passed upon him, is to furnish him with a new certificate specifying the period when the reduced term of imprisonment awarded therein will expire. C. O. No. 21 of vol. 3.

Certificate to be
tence.

2902. In the Western Provinces each prisoner is to be provided, in lieu of the certificate, with a wooden ticket measuring four by two inches; one side of which is to be branded with the prisoner's number, and the two last figures of the year in which he was admitted; and on the reverse the date of the expiration of the sentence. C. O. Insp. Prisons *W. P.* No. 3, August 28, 1845.

Wooden ticket
used in *W. P.* in
lieu of certificate.

2903. With the view to prevent the possibility of the detention of any prisoner beyond the term of imprisonment adjudged against him, the session judge and magistrate are to keep, in the English language, registry books of all unexpired sentences, in the form

Register of

OF JAILS.

annexed(a). The entries are to be made by the magistrate immediately on receiving the warrant. Persons are to be entered under the year in which their sentences expire, so that a glance over it at the end of each year will show whether any have been by neglect confined beyond their period of sentence. A memorandum of this is to be made and signed by the session judge or magistrate at the close of each year. Prisoners sentenced to death, or to imprisonment for life, are to be entered in the year in which they are sentenced. The register of each court is to be confined to the warrants issued from that court. The register of sentences passed by the magistrate, and joint magistrate, is to be kept by the foudaree nazir, and submitted for the inspection of the magistrate at the commencement of each month. C. O. Nos. 23, 71, 167, 178, and 225 of vol. 2.

Rule in case of mitigated sentence.

2904. Whenever the sentence passed on a prisoner is mitigated, the magistrate, as well as session judge where the original sentence has been passed by the latter officer, is immediately to cause the name of the prisoner to be struck out, in red ink, from the register of the year, in which such original sentence would have terminated, and to be entered in the register of the year in which the mitigated sentence is to expire, inserting in col. 7 of the former register a memorandum of such mitigated sentence. When the mitigation or remission of punishment has been ordered by the nizamat adawlut, the endorsement on the prisoner's warrant of such mitigation or remission is to be made in the vernacular language of the district, as well as in English. C. O. No. 21 of vol. 3.

Judges to examine registers.

2905. Judges are at intervals to call for and examine these registers, in order to satisfy themselves that they are carefully and punctually kept up. C. O. Govt. Bengal, No. 1044, April 30, 1855.

(a) Register of unexpired sentences.

1.	2.	3.	4.	5.	6.	7.						
Names of prisoners.	Date of sentence.	Term of imprisonment.	When the sentence will expire.	Warrants when received back from jailor or magistrate.			Warrants when returned to the nizamat adawlut.					
		Years.	Months.	Month.	Date and year.	Month.	Date.	Year.	Month.		Date.	Year.
Gharum,	10th April 1826,	7	April	10th 1833,	April	12th	1833	<i>Memo.</i> Column 6 to be omitted in magistrate's register.	
Jubba,	7th Aug. 1833,	Death.	"	"	Sept.	10th	1833	Sept.	12th	1833		
Jane,	5th Sept. 1833,	Release.	"	"	Sept.	12th	1833	"	"	"		
Pema,	27th Feb. 1833,	"	6 Aug.	27th 1833,	Aug.	28th	1833	"	"	"		
Rambuksh	3rd Feb. 1833,	"	3 May	3rd 1833,	May	4th	1833	"	"	"		

Note.—The register of each court should be confined to the warrants issued from that court. Warrants of magistrates, joint magistrates, and assistants, to be returned by the jailor when completely executed with an endorsement to that effect on the reverse.

2906. In the Western Provinces, two registers are to be kept, one of admission, and the other of release, in the forms annexed (*a* and *b*). In the former a number is assigned to each prisoner; and a fresh register is prepared at the commencement of each year, the names of the prisoners remaining in confinement being first entered with their original numbers, and new numbers being assigned in consecutive order to new admissions. A warrant of imprisonment should include only those prisoners, whose sentences will expire on the same day; and such warrants are to be carefully docketed and kept in bundles according to the year and month in which the sentence will expire. Only one register of release should be kept for all prisoners whether sentenced by the magisterial officers, the session judge, or the nizamat adawlut. A prisoner sentenced to death or imprisonment for life should be entered under the date of his sentence: and banished prisoners will be entered under the date of the expiry of the sentence in both zillahs. A memorandum is to be made in the column of remarks of the register of release, if a sentence be mitigated, or an additional term of imprisonment awarded; but in the latter case the fresh sentence is not to be entered in the register of admissions, until the expiry of the first sentence and re-admission on such second sentence. A memorandum of the death, or escape, or transfer of any prisoner is to be made at the time of the occurrence in both registers, and on the original warrant; and copy of the proceeding held is to be sent to the judge for entry in his register. The original warrant

Two registers to be kept in *W. P.*; one of admission, and the other of release.

Warrant to include those whose sentences expire on the same day.

All warrants to be docketed and put in bundles.

One register of release to be kept for all, and entries to be made under date of expiry.

In case of mitigation or additional sentence.

In case of death, escape, or transfer.

(a) *Book of prisoners daily admitted into jail under sentence.*

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.
Date of admission of prisoner into jail.	No. of warrant.	Current number of prisoner.	Name and age of prisoner, and father's name.	Crime, caste, and profession.	Term, and date of sentence.	With or without labor.	With or without irons.	Amount of fine and term of payment.	Sentence by whom passed; and prisoner from what zillah received.	Date of expiration of sentence.	Remarks.

Register of release.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.
No. of warrant.	Current number of prisoner.	Name of prisoner.	Crime.	SENTENCE.			Sentence by whom passed, and prisoner from what zillah received.	Date of release, and signature of officer.	Date of return of warrant.	Remarks.
				Date.	Term.	Expiration.				

In cases of recapture.

and purwanas of absconding prisoners are to be retained by the magistrate and jailor. On the re-capture of an absconded prisoner under sentence of labor, he is immediately to be employed in fulfilment of his primary sentence; and is not to be placed in the howalat pending enquiry into, or a final order on, this or any other offence. The expiry of a recaptured prisoner's first sentence will be postponed for as many days as he has remained at large, and a fresh entry of such expiry must be made in the register of release. C. O. Insp. Prisons *W. P.* No. 3, August 28, 1845.

Sentence passed in another jurisdiction.

By joint magistrate not residing at sudder station.

2907. All prisoners committed by a joint magistrate not residing at the sudder station to take their trial before a sessions court, if sentenced to a period short of perpetual imprisonment, and if banishment form no part of their sentence, are to be sent to be imprisoned till the expiration of their term at the station of the joint magistrate by whom they were committed, provided the jail at such station has room and accommodation for the prisoners without danger to their safe custody or health. Where this is not the case the prisoners must, either all or part of them, according to the necessity, be confined in the jail of the magistrate's station. C. O. No. 288 of vol. 1.

Execution of

2908. Whereas it is expedient, that offenders sentenced by the mofussil authorities to imprisonment, with or without hard labor, should be subjected to the most improved rules of prison discipline, which cannot in all cases be conveniently done except in the prisons locally situate within the jurisdiction of Her Majesty's supreme courts, it is enacted that all civil and criminal jails and houses of correction within the jurisdiction of Her Majesty's supreme courts, shall, according to the nature of the case, be liable to be used by the sheriff for the purposes of this Act [*i. e.*, the execution of mofussil processes within the jurisdiction of the supreme court], and the parties imprisoned therein under the authority of this Act shall be liable to the prison-discipline thereof;—and all sentences of imprisonment passed by any judge, court, or magistrate in the Company's territories beyond the local limits of the supreme court, may be executed in whole or in part within any of the jails or houses of correction aforesaid, provided that a copy of the warrant of commitment or other process authorizing the imprisonment be so indorsed as aforesaid, [*i. e.*, by one of the judges of the supreme court] and such indorsement contain the necessary directions. Act XXIII. 1840, sect. 8.

Execution of sentences passed by Company's officers administering foreign states.

2909. Within the territories subject to the government of the East India Company, and without the local limits of the jurisdiction of Her Majesty's courts of judicature, the several officers in charge of jails are competent to give effect to any sentence that is passed by any court established, or that may be established by the authority of the governor general in council, for the administration of criminal justice in states or territories administered by officers acting under the authority of the Company, although such states or territories are not subject to the government of the presidency of Fort William in Bengal, Fort St. George, or Bombay, or are not subject to the operation of the general regulations. Act V. 1847, sect. 1.

Warrant of such officer is sufficient authority for hold-

2910. A warrant under the official seal and signature of the officer or officers, exercising criminal jurisdiction within such states or territories as aforesaid, is sufficient

authority for holding any prisoner in confinement, or for transmitting any prisoner for transportation beyond sea, or for inflicting any other punishment prescribed therein. Act V. 1847, sect. 2.

ing prisoner in confinement;

2911. If any officer in charge of a jail entertains any doubt as to the legality of any warrant sent to him for execution under this Act, or as to the competency of the person or persons, whose official seal and signature is affixed thereto, to pass the sentence and issue such warrant, such officer is to refer the matter to the government to which he is subject, by whose order on the case such officer, and all other public officers, are to be guided as to the future disposal of the prisoner. Pending any such reference the prisoner is to be detained in custody in such manner and with such restrictions or mitigations as are specified in the warrant. Act V. 1847, sect. 3.

if the officer in charge of " " entertains the legality of the warrant, or of the

2912. The provisions of the existing Acts and Regulations, and all other rules in force for the treatment and security of prisoners confined in the said jails, are to apply and to be of equal force and effect in the case of prisoners confined therein under this Act, as in the case of other prisoners confined therein. Act V. 1847, sect. 4.

treatment and security of prisoners confined under such warrant.

2913. A magistrate is competent to give effect to the sentence of a general court martial, adjudging imprisonment with labor among the convicts of the civil power, on the offender being delivered into his custody, and the sentence being certified to him for the purpose of giving it effect by the judge advocate general, or his deputy under the authority of the commander-in-chief; and the sentence so certified is the magistrate's warrant and authority for carrying it into effect according to the terms of it. Reg. IV. 1820, sect. 2.

Magistrates required to give effect to sentences of military tribunals.

2914. Whenever, under Act XXIII. 1839,(a) any sentence of a court martial adjudges imprisonment, or imprisonment with labor, for any offence, it is the duty of every judge, magistrate, sheriff, or other officer in charge of any jail, to give effect to such sentence on the offender being delivered into his custody, and on being furnished with a copy of the sentence by the officer commanding the division, garrison, regiment, or detachment, to which the offender belongs. Act II. 1840.

2915. Whenever a court martial adjudges imprisonment with labor, or with solitary confinement, or both, or whenever the sentence of such court is commuted to any such imprisonment, it is the duty of every judge, magistrate, sheriff, or other officer in charge of a jail, to give effect to such sentence, on the offender being delivered into his custody, and on being furnished with a copy of the sentence by the officer commanding the division, fieldforce, district, or brigade, within which the trial is held. Act XX. 1845, article 81.

2916. Officers in charge of jails are not to receive into custody any man, who may be sentenced to imprisonment by court martial, unless accompanied by the proper warrant of commitment, as prescribed by general orders, March 3, 1853, and a descriptive roll of the

But not to act without warrant of commitment in prescribed form.

(a) This Act empowers courts martial in certain cases to sentence soldiers of the native army of the Company to imprisonment with or without hard labor for two years if a general court martial, or one year if a garrison or line court martial, or six months if a regimental or detachmental court martial.

prisoner(a). C. O. Govt. Bengal, No. 16, December 6, 1854. C. O. Insp. Prisons *W. P.* Nos. 50 of 1854 and 65 of 1855.

Commander-in-chief may pardon military convicts, or remit part of sentence, in certain cases.

2917. The commander-in-chief of the military forces in the service of the East India Company in each presidency has power to pardon any person belonging to the said forces, convicted by sentence of a court martial of any offence against the articles of war framed for the government of the native officers and soldiers in the military service of the East India Company, which, wherever committed, is not punishable otherwise than by sentence of a court martial; or, instead of granting a full pardon to any such person, may remit any part of the punishment awarded for such offence. Act VI. 1850, sect. 1.

Warrant to be issued ;

2918. In such cases, the commander-in-chief is to issue a warrant under his hand setting forth the offence, and a copy of the warrant or other instrument by which the offender is kept in custody in execution of the sentence, and pardoning or remitting such part of the punishment awarded for the offence as to him shall seem fit. Act VI. 1850, sect. 2.

and counter-signed by magistrate or judge, if offence be punishable only by court martial.

2919. The said warrant shall be countersigned by the magistrate of the zillah, in which the offender is undergoing his sentence; or, if he is confined in any prison belonging to one of the supreme courts of judicature established by royal charter, shall be countersigned by a judge of such court; if it shall appear to such magistrate or judge that the offence, wherever committed, is not punishable by any authority other than that of a court martial; but not otherwise. Act VI. 1850, sect. 3.

Officer in charge of jail to give effect to warrant.

2920. All sheriffs, jailors, and other persons having custody of any offender under sentence of a court martial, are to obey and give effect to any warrant of the commander-in-chief, countersigned by a magistrate, or judge of the supreme court as aforesaid, for the pardon and release of any offender in their custody respectively, or for the remission of any part of his sentence. Act VI. 1850, sect. 4.

(a) With reference to the 2nd paragraph of the 84th article of war for the native troops, the commander-in-chief is pleased to direct, that, when a soldier of the native army shall be delivered over to the civil power to undergo imprisonment with hard labor, there shall be sent with him, in addition to a descriptive roll containing a statement of any indelible mark upon his person and any other matter tending to his proper identification, a warrant of commitment made out in the following form :—

To the magistrate or other officer in charge of the jail at _____

Whereas at a _____ court martial held at _____ on the _____ day of _____ 185 _____, sepoy* of the _____ regiment of native† Infantry, was convicted of _____‡; whereas the said _____ court martial on the _____ day of _____ 185 _____, passed the following sentence upon the _____, that is to say _____ (sentence to be entered in full but without signature):—

And whereas the said sentence has been duly confirmed§ by _____ commanding _____, and the said _____ is herewith transmitted to you to undergo the same :—

Now these are to require and authorize you to receive the said _____ into your custody, and to inflict upon him the said sentence of imprisonment with hard labor for _____, reckoned from _____ the day on which the said sentence was passed.

Given under my hand at _____ this _____ day of _____ 185 _____.

To be signed by the confirming officer of a regimental, detachmental, or line court martial, or by the assistant adjutant general of the division, or the brigade major of the station, or the commanding officer of the regiment, if the trial has been by general or district court martial.

* Or trooper, or private, or as the case may be.

† Or light cavalry, or artillery, or as the case may be.

‡ The offence to be briefly stated here as desertion, theft, receiving stolen goods, fraud, disobedience of lawful command, or as the case be.

§ If there is any mitigation of the sentence, such mitigation must be noticed thus, "to the extent of _____"

SECTION XII.

OF REMOVAL OF PRISONERS UNDER SENTENCE.

2921. When any person is under sentence of imprisonment, within the territories under the government of the East India Company, by any authority other than that of one of the supreme courts of judicature established by royal charter, the governor or governor in council, or other person administering the government of the presidency or place, may order the removal of such prisoner from the prison or place, in which he is confined, to any other public prison or place of confinement within the same presidency or government. Act VII. 1850, sect. 2.

Government may order removal of prisoners to another place of confinement.

2922. The time of removal from one prison to another, or while the prisoner is in custody under such warrant of removal, is to reckon as part of his imprisonment. Act VII. 1850, sect. 3.

Time of removal included in the term of imprisonment.

2923. When a magistrate has occasion to forward a prisoner to another district, he is invariably to transmit either by dâk, or with the chalan, a roobakaree or letter containing a distinct statement of the order, in furtherance of which the despatch is made. C. O. No. 2211, May 9, 1854 *W. P.*

Notice to be sent of order under which prisoner is removed.

2924. The magistrates are to report when convicts are sentenced to transportation beyond sea, or to banishment, specifying the names, ages, crimes, and sentences of the several convicts; and, in the case of those sentenced to banishment, the district in which they have usually resided before they were brought to trial. Reg. LIII. 1803, sect. 8, cl. 4.

Report of convicts sentenced to transportation, or banishment;

2925. All statements of prisoners sentenced to imprisonment in banishment, or in transportation, or for life in the Alipore jail, are to be forwarded by magistrates for the orders of government. C. O. Govt. *Bengal*, No. 1072, October 10, 1844.

to be made to government by magistrate.

2926. Magistrates are to distinguish in these reports prisoners under sentence of the nizamat adawlut, from those who have been sentenced by the sessions court; specifying also the date of sentence in each case. C. O. No. 150 of vol. 1.

Prisoners to be classified therein.

2927. Abstracts in a tabular form of sentences of imprisonment in banishment, or in transportation, or for life in the Alipore jail, passed by the nizamat adawlut or session judges, are to be forwarded to government by the court and the session judges respectively. Such abstracts are to be forwarded by the sudder court as soon after the date of sentence as is practicable; but abstracts of sentences of banishment, passed by the session judges, are not to be transmitted by them, until after the expiration of 3 months from the date of sentence, in order to allow of that period for appeal. C. O. Govt. *Bengal*, No. 1072, October 10, 1844. If the case be still under appeal on the expiration of three months, the judge is to submit an abstract statement when the result of the appeal is known, noting thereon the date of the sudder court's final orders on the appeal and the date on which they were received in his office. But he is on the expiration of three months to submit his abstract, as above required, nevertheless; distinguishing the prisoners who have not appealed within

Abstracts of sentences to be forwarded by nizamat adawlut and session judge.

If the case remain under appeal beyond three months.

that period; and noting in the case of prisoners who have appealed, whether or not final orders have been received. C. O. Govt. Bengal, No. 18, March 19, 1855.

Form of application for orders for removal.

2928. No prisoner under sentence of transportation, or perpetual or temporary imprisonment in banishment, though the place in which he is to undergo his imprisonment is mentioned in the sentence, is to be removed from the jail until the receipt of the orders of government on the application for his removal. The magistrates are to submit separate statements of convicts sentenced by the sessions courts, and by the nizamut adawlut, according to the annexed forms A,(a) B,(b) and C(c). Statement A is to be prepared and sub-

(a) A. Statement of convicts sentenced by the session judge, without reference to the nizamut adawlut, to imprisonment in banishment at a jail delivery of , for the month of , 185 .

1.	2.	3.	4.	5.	6.	7.	8.
No.	Names of convicts and of their fathers; and of the village and district of which they are natives.	Caste.	Age.	Crime.	No. of each convict in the jail delivery statement No. 1.	Date of sentence of session judge.	Sentence.

(b) B. Statement of convicts sentenced by the session judge, without reference to the nizamut adawlut, to imprisonment in banishment at a jail delivery of , for the month of , 185 .

1.	2.	3.	4.	5.	6.	7.	8.	9.
No.	Names of convicts and of their fathers; and of the village and district of which they are natives.	Caste.	Age.	Crime.	No. of each convict in the jail, delivery statement No. 1.	Date of sentence of session judge.	Date of receipt by the magistrate of the warrant of the session judge.	Sentence.

(c) C. Statement of convicts sentenced by the nizamut adawlut to temporary imprisonment in banishment, or to perpetual imprisonment in the jail at Alipore, or transportation beyond sea.

1.	2.	3.	4.	5.	6.	7.	8.
No.	Names of convicts and of their fathers; and of the village and district of which they are natives.	Caste.	Age.	Crime.	Date of sentence of nizamut adawlut.	Date of receipt of warrant of session judge for carrying the sentence into execution.	Sentence.

mitted after the expiration of 30, but within the period of 45 days, from the end of the month in which the sentences were passed. The magistrate is to be careful not to include in the same statement convicts sentenced at the jail deliveries of different months. In the event of the issue of a warrant including a sentence of banishment being suspended in any case [pending reference to the nizamut adawlut] under the rule contained in cl. 6, sect. 4, Reg. IX. 1831*, the magistrate is to submit a statement in form B within 15 days after the receipt of the warrant. Statement C is to be prepared and submitted within 15 days from the receipt by the magistrate of the warrant of the session judge for carrying into effect the sentence of the nizamut adawlut. Whenever a magistrate has occasion, in consequence of the crowded state of the jail, to apply for permission to remove convicts not sentenced to banishment to another district, he is to submit statements in form as similar to these as possible, keeping the prisoners sentenced by the sessions court separate from those sentenced by the nizamut adawlut. In these statements the name of each prisoner's father is invariably to be inserted. C. O. Nos. 183 and 204 of vol. 2. C. O. Govt. *Bengal*, No. 34, May 14 1856.

* v. para. 1473.

So, if removal of

2929. In the *Western Provinces*, applications relative to the disposal of prisoners sentenced to banishment, are to be submitted through the inspector. C. O. Insp. Prisons *W. P.* No. 44, March 7, 1854; and No. 63 of 1855.

Application to be sent through inspector, *W. P.*

2930. The jail darogah is to be furnished with a memorandum, for the guidance of himself and successors, to the effect that he will be expected to draw the attention of the magistrate to the cases of any prisoners sentenced to imprisonment in banishment, for whose transfer no orders are received within 4 months from the date of sentence. This however is not intended to relieve the magistrate from a proper share of responsibility. C. O. Govt. *Bengal*, No. 2014, September 24, 1845.

Darogah to remind the magistrate, if no orders for 4

2931. The nizamut adawlut is also competent, under the discretion allowed by the Mahomedan law, to order the removal of all convicts, under sentence of imprisonment, to any jail or district within the Company's possessions, in which it is thought proper to keep or employ them during the period of their respective sentences, although no specific sentence of banishment has been passed against them. But no such removal is to take place without the special order of the nizamut adawlut [or of government.] Reg. LIII. 1803, sect. 8, cl. 5.

The sudder court may order removal of convict to any jail.

2932. Under this rule a prisoner, who had twice effected his escape from a mofussil jail, was removed to Alipore for the rest of the term of his imprisonment by order of the court. Reports *L. P.* 1855, part 2, page 853.

Example.

2933. As the necessity of making a reference to government for the removal of sick prisoners from the jail of one district to that of another, occasions considerable delay, which in cases of emergency frequently proves injurious to the health of the prisoners, if not fatal to them, officers in charge of jails are authorized to transfer sick prisoners in extreme cases from one jail to another on their own responsibility reporting the circumstance to the secretary to government as soon after as possible. C. O. Govt. *Bengal*, No. 1030, June 9, 1847.

Officers may transfer sick prisoners on their own

reporting to ment.

Government may retain prisoners under sentence of transportation.

2934. It is competent to government to detain in the jail at Alipore, for any period deemed expedient, any convicts sentenced to transportation. Reg. IX. 1813, sect. 2, cl. 2.

In what cases they are not to be sent to Alipore, in regard to period of sentence;

2935. Prisoners are not to be sent to Alipore from the *Western provinces*, who have been sentenced to imprisonment for a shorter period than 14 years; nor from the *Lower provinces*, who have been sentenced to imprisonment for a shorter period than 7 years. C. O. No. 106 of vol. 1.

in regard to incapacity for labor.

2936. No persons are to be forwarded to Alipore jail, who are incapable of bodily labor from age, sickness, or other infirmity; or who have been exempted from bodily labor by their sentences; or in consideration of their former rank and situation in life; under C. O. Nos. 3, 8, and 44 of vol. 1*. C. O. No. 88 of vol. 1.

* v. para. 2783 of seq.

At what seasons to be sent.

2937. Convicts sentenced to imprisonment in Alipore jail should be forwarded so as to arrive at Calcutta during the cold season, or in the early part of the south east monsoon, in order that their constitutions may be habituated to the climate previously to the commencement of the periodical rains. C. O. Nos. 97 and 106 of vol. 1.

Lists of convicts to be sent with them;

2938. When convicts under sentence of transportation are sent to the Alipore jail, an accurate list is to be transmitted with them in the following form:

Names of prisoners and of their fathers.	Description of prisoners.	Crime.	Date of sentence.	Period of
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It is important that the description of the persons of the convicts inserted in the second column should be accurate. The lists are to be written in both the Hindostanee (or Bengalee in the Bengal districts) and Persian languages, as well as in English, and the magistrates are to issue positive orders, that the guards on relieving each other should carefully compare the same with the convicts. The same rules are applicable to prisoners under sentence of banishment to other districts, either for life, or for a term of years. C. O. Nos. 7 and 25 of vol. 1; and No. 20 of vol. 3.

noting dangerous characters.

2939. If any of such convicts is of a notorious and dangerous character, it is to be noted in the above statement. C. O. No. 95 of vol. 1.

Purwana to be given to native officer in charge.

2940. In addition to the lists in English and the vernacular with which the escorts are furnished under the above orders, the principal native officer should always receive a purwana authorizing him to take charge of the prisoners, and specifying the route he is to follow and the jails at which he is to halt. In cases of escape or detention by sickness, the fact should be notified on the back of the list by the magistrate of the district in which such escape or detention occurs, instruction being at once forwarded by that officer both to the magistrate of the district when the prisoner was convicted, and to the superintendent of the Alipore jail. C. O. Govt. *Bengal*, No. 4, September 15, 1853.

In case of escape or detention by sickness on the road.

Mode of transmission L. P.

2941. On the receipt of warrants from the session judges for the transportation of prisoners sentenced by the nizamat adawlut, the magistrates are to forward such prisoners

Travelling allow-
of

2945. Jail burkundazes, when sent in charge of prisoners to districts other than that in which they are employed, are to receive travelling allowance at the rate of 3-tenths of their salary. C. O. Govt. *Bengal*, No. 1307. July 4, 1853.

Burkundazes to
receive certificate

2946. Burkundazes sent to Alipore in charge of convicts are to be furnished with a certificate, on presentation of which they will receive back passage on the government steamers free of expense. C. O. Govt. *Bengal*, No. 1818, August 26, 1846.

Receiving jails
L. P.

2947. *Rule 1.* The undermentioned jails are to serve as receiving jails for all prisoners sentenced, in the districts specified, to transportation or to imprisonment in the Alipore jail :

Patna—for the districts of	Patna, Sarun, Chumparun, Tirhoot, Shahabad, Behar.	Rajshahye—for the districts of	Rajshahye, Malda, Dinagepore, Rungpore, Bogra, Pubna.
Bhaugulpore—for	{ Bhaugulpore, Purneah.	Dacca—for	{ Dacca, Mymunsing, Sylhet, Tipperah.
Bakergunj—for	{ Bakergunj, Noakhalee, Chittagong.	so long as a government steamer continues to run between Dacca and Calcutta.	

Statements to be
sent to superinten-
dent of Alipore jail
and Government.

Rule 2. The magistrates of the several districts are to forward their convicts to the receiving jails, at such times, and in such numbers, as is most convenient, accompanied with their warrants and descriptive rolls. *Rule 3.* From the receiving jails, as also from the river stations of Monghyr and Moorshedabad, the convicts are to be despatched under suitable escort to Calcutta on the government steamers, as opportunity may offer, the magistrates in charge of those jails communicating direct for the purpose with the steam agents. The above arrangement applies to Moorshedabad only for such time as the Bhaugiruttee is navigable for steam vessels; during the remainder of the year convicts are to be forwarded from that district to Alipore in the same manner as heretofore. *Rule 4.* The magistrates in charge of the receiving jails, as also the magistrates of Monghyr and Moorshedabad, are, previous to each despatch, to transmit by dāk to the superintendent of Alipore jail a statement of the prisoners about to be despatched, in order that due provision may be made for their reception. The statement is to be in the form C [see note to para. 2929] with an additional column, showing the district from which each prisoner was originally sent. *Rule 5.* Such magistrates are to be careful to forward to the secretary to government, simultaneously with the despatch of these statements, copies of the same for comparison with the abstracts furnished by the sudder court. They are also to be particularly careful to have prisoners and their guards in readiness, together with provisions for the usual duration of the trip, which may be ascertained from the steam agents, so that no delay may occur in the embarkation. Resolution Govt. *Bengal*, June 3, 1846.

2948. The following rules are to be observed, whenever convicts are forwarded on government steamers. *Rule 1.* On receipt of information of the arrival of a government steamer at any river station, where convicts under sentence of imprisonment in transpor-

tation beyond sea, or of imprisonment in the Alipore jail, are awaiting orders for their transit to that jail, the magistrate at that station will write to the steam agent, who may be resident at such station, and to the commander of the vessel, to make the necessary arrangements for their embarkation; and he will state at the same time the number to be embarked. But the entire number of convicts on board of one vessel at one time should ordinarily not exceed forty, and never when no military guard is on board. When a larger number of convicts may be awaiting transport at a station, an application should, if the exigency of the case will admit of it, be previously made by the magistrate to government for special orders on the occasion. *Rule 2.* The magistrate embarking convicts as above, should be particularly careful to have the convicts and their guards in readiness, together with a proper supply of provisions, according to the usual or probable duration of the trip, in order that no delay may occur in the embarkation. *Rule 3.* The magistrate, or one of his covenanted subordinates, should superintend the embarkation and furnish the commander with a descriptive roll of the convicts, similar to that forwarded to the superintendent of the Alipore jail. *Rule 4.* The magistrate will also furnish the principal officers of the guards, as well as the superintendent of the Alipore jail and the government, with the several documents relating to the convicts, &c., that are now furnished under the existing orders of the sudder court and government. *Rule 5.* On the convicts being placed on board, their old gunny beddings should always be exchanged for new ones; and the clothing, &c., allowed to them, under existing orders, should be carefully searched, with a view to prevent the possibility of their concealing in them knives or other instruments as means for effecting escape or suicide. *Rule 6.* The irons of the convicts are to be strong, and their rivets perfect with welded heads on both sides. They are to be carefully examined by the commander, who should certify in his receipt for the convicts, that he has personally satisfied himself that the irons and rivets are strong and firm. The *bél* chains to which the convicts are to be attached should be of strong round links. *Rule 7.* The convicts are to be fastened to long *bél* chains kept on board each steamer. No more than ten convicts should be fastened to each chain. State prisoners, when forwarded, should be kept separate from ordinary felons. *Rule 8.* Instead of the chain passing through the rings of the fetters of each convict, by which arrangement all the convicts must be let loose to get at the last man, each convict should have a separate chain of two feet in length, welded to his fetters, to be locked on to a link of the *bél* chain with a separate padlock. Each convict can thus be removed from the running chain separately without interfering with others; they will also be less cramped and confined while sleeping. By adopting this plan, convicts of a superior caste, or any notorious offender, can be stapled down separately. *Rule 9.* The convicts are to be so classed in the running chains as to admit, if possible, of the respectable caste, in one chain, eating their meals apart from the lower castes, without leaving the running chain. *Rule 10.* One mehter should accompany the gang of convicts sent by each steamer. *Rule 11.* One or two metal pans should be supplied to the mehter in charge, for the use of the convicts during the night. *Rule 12.* Should any convict be released from the running chain, in consequence of

On the arrival of the steamer, magistrate to communicate with steam-agent and commander.

What number of convicts may be embarked on one vessel.

Convicts and

of provisions.

Magistrate or assistant to superintend embarkation; and to furnish a description roll.

Documents to be furnished.

New bedding to be furnished.

Search for knives, &c.

Irons to be firmly rivetted.

Commander, to certify personal examination of irons.

Bél chains.

Each convict to be fastened to the *bél* chain by a separate chain and

Convicts to be chained so as to admit of their eating separately.

Cautions

and attempts to escape.

Strength of guards required.

Guard to be un-
of

Arms of burkundazes and nujeebs.

Precautions regarding arms.

In the case of
abomination on
part of the con-
victs.

evident sickness, he can be stapled to any part of the vessel the commander may deem fit; but commanders should be on their guard against pretended illness, and care should be taken in the removal of a convict from one part of the vessel to another, that he does not attempt to cast himself over-board. It should be borne in mind, that men meditating an escape are likely to be the quietest and best behaved, and that every one of them would rather die at once than have to go across the sea. They should not be allowed any the least possible means of injuring themselves or others, and should be made to feel that they have no chance of escape. *Rule 13.* When the number of convicts attached to a bel chain may be inconsiderable, the strength of the guard to be placed over it should be fixed by the magistrate as at present, with due advertence however to the character of the convicts. But when the chains shall have the full number of convicts specified in rule 7 fastened to them, there should be four burkundazes, or nujeebs, provided for each chain, so as to furnish one sentry day and night to be relieved every two hours; one duffadar to two chains; and one jemadar, when there are more than two chains. There will be besides six burkundazes or nujeebs on duty over the main guard, and even a larger number, should the magistrate consider it necessary, with reference to the character of the convicts or to other special reasons. When a small additional number of convicts is embarked at a second station and fastened to a chain already partly occupied, the magistrate at that station should supply such a guard, as with the number already on board will, in the proportion above fixed, be sufficient for the whole gang fastened to the chain. In cases where one or two convicts are embarked at a second station, and the guards already on board are considered sufficient, the magistrate at such station should send one additional burkundaz or nujeeb only, as in formal charge of the convict or convicts forwarded by him, and of the necessary papers to be delivered to the superintendent of the Alipore jail. The whole of the guard sent on board, should be placed under the immediate authority and control of the commander of the vessel, and required strictly to conform to all orders he may issue, he being responsible for the safe custody of the convicts. *Rule 14.* Each burkundaz should be armed with a sword and shield, and each nujeeb with a musket. The latter should each be furnished with twelve rounds of ball cartridge for use when necessary; but to be kept at the main guard apart from the prisoners. All proper precautions should be taken to prevent the prisoners from gaining possession or making use of any weapons; to this end the sentry on duty over the prisoners should be at each change directed to be very careful of whatever weapon he has with him, when he approaches the bel chains; and the duffadar should be directed to hand over his bayonet or sword to the sentry whenever he may have to stoop or move near to the prisoners, in order to unloose or fasten a chain, or for any other purpose. *Rule 15.* Should any convict become insubordinate, the commander of the vessel shall be at liberty to reduce his rations for such time, and in such proportion, as he may think proper. In cases of gross insubordination, the circumstances should be recorded, and duly attested in the shape of a charge, to be laid before the superintendent of the Alipore jail, with a view, after due investigation, of punishing the offenders according to the circumstances of the case. *Rule 16.* The commander

should require one of his officers to see the rations distributed, to report complaints, and to maintain order and silence. *Rule 17.* On arrival off Calcutta, the convicts are not to be disembarked later in the day than one hour before sunset if the boats anchor below Fort point, or later than two hours before sunset if the boats are anchored above Fort point.

Officer of vessel
to see the rations

of

Rule 18. The above rules are also to be observed when, under special circumstances, convicts are sent from one station to another on government steamers. *Rule 19.* The commander of each government inland steamer or flat should be furnished with a copy of these rules for his guidance, whenever he may have occasion to bring down convicts to the Alipore jail, or to take them from one station to another under special circumstances.

Same rules, if
convicts be sent
from one station to
another.

Copy of rules to
be furnished to
commander.

Rule 20. The greatest care should be taken by the officers concerned to ascertain that the convicts to be embarked have no cord, or thread, or waxed silk, concealed on their persons, or in their bedding, clothing, &c., as they have been known to make use of these articles to cut their fetters. *Rule 21.* As it is a common practice amongst convicts to conceal flaws and cuts in their fetters by the use of cement, the commander of the steamer should cause all the fetters and ankle rings to be carefully scraped with a knife, or other sharp steel instrument, in his own presence, as soon as possible after the convicts are embarked. This process should be occasionally repeated during the voyage. C. O. Govt. Bengal, No. 562, January 29, 1856 ; and No. 2110, June 5, 1856.

No cord, thread,
or waxed silk, to
be allowed to con-
victs.

Fetters and

2949. *Rule 1.* The following jails are to be considered as receiving jails in the first instance for all prisoners, sentenced to transportation in the districts specified:

Mode of trans-
mission in Western
provinces ; and
receiving jails.

Allyghur—for the districts in the Delhi and Meerut divisions ;

Furruckabad—for the districts in Rohilkund ;

Cawnpore—for the districts in the Agra Division (except Furruckabad) ;

Allahabad—for Bundelcund and the districts in the Allahabad division (except Cawnpore) ;

Benares—for Juanpore ;

Ghazeepore—for Azimghur and Goruckpore.

Rule 2. The magistrates of the several districts are to forward their convicts to the receiving jails at such times and in such numbers as may be most economical and convenient, accompanied with the usual warrant and descriptive roll. The magistrates in the several Delhi districts are to forward them in the first place to the magistrate of Delhi, who is to receive charge of them, and send them on with the convicts from his own jail. In the same way the magistrate of Meerut is to receive charge of the prisoners from the Dhoon, Mozuffernuggur and Seharunpore ; the magistrate of Bareilly of those from Bijnore and Moradabad ; the magistrate of Agra of those from Muttra ; and the magistrate of Futtehpore of those from Banda and Humeerpore. *Rule 3.* On the 1st January in each year, and on the first day of each following quarter, the prisoners who have been collected at Allyghur and Furruckabad respectively, are to be forwarded to Cawnpore, from whence they are to proceed, together with the Cawnpore prisoners, in one body to Allahabad. *Rule 4.* From Allahabad and the other river stations, the convicts are to be despatched to Calcutta per steamer, as opportunity may offer ; the magistrates communicating direct for this purpose with the

agent for government steamers at Allahabad. *Rule 5.* Previous to each despatch, the magistrate of each river station is to furnish the superintendent of the Alipore jail direct with a statement shewing the number of prisoners to be expected, in order that due provision may be made for their reception. This statement is to be drawn out in the usual form [i. e. the statement C of para. 2929], with an additional column to shew the district from which the prisoner was originally sent, and is to be headed "statement of convicts sentenced to transportation for life, despatched on the—of—185—to Calcutta from the jail at——." —A copy of each statement is to be forwarded for record in the office of the secretary to government. Magistrates, forwarding convicts under these orders for transmission to the river stations, and ultimately to the Alipore jail, are to be careful to send with each such convict a descriptive roll, in the form annexed(a) and also copy of the warrant under which he is confined. These documents are to accompany the prisoners and to be delivered with them to each magistrate, into whose charge they are committed on the way. The magistrates of Allahabad, Mirzapore, Benares, and Ghazeepore, are to abstain from forwarding any convicts to Alipore unless they have received the above mentioned papers regarding them. Govt. Order, *W. P.* September 12, 1845, and January 8, 1846.

Precautions to be used in order to ensure safe custody during transmission.

2950. Convicts of dangerous character, on their passage by water from one station to another, should be confined entirely to the boat, or should be permitted to land only in small numbers at a time, if it is necessary to remove them occasionally on shore. The general use of handcuffs and neckchains would be objectionable, as endangering the lives of the convicts in case of accident to the boat by fire or otherwise; but in special instances they are indispensable; and the practice is not therefore prohibited, but is to be resorted to only in cases of emergency. The precautions for security should be adapted in each instance to the

(a) List of prisoners sentenced to transportation beyond seas, despatched from the jail to the superintendent of the Alipore jail.

1.	3.	3.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.
number of prisoner.	the pi	on judi s adawl s	Age.	Place of residence, zillah, pergunnah, and village.	In what zillah, and by what authority sentenced.	Crime, term and date of sentence.	Date of transfer in transportation or banishment to Alipore.	DESCRIPTIVE ROLL.	Height.	ade,	lan.	On prisoner's connections, former convictions, and course of life.	temper and conduct	
		Number or number of warrants		Place of residence, zillah, pergunnah, and village.	In what zillah, and by what authority sentenced.	Crime, term and date of sentence.	Date of transfer in transportation or banishment to Alipore.	Features, complexion and marks.	Feet. Inches					
		91	148	35	Delhi : Goleenoo : Bona.	Agra Nissant Adawlut.	Accomplice in theggee : for life with labor in irons ; May 21, 1846.	July 9, 1846.						
								marks and some made on				Originally convicted and sentenced on the 7th September 1843 to imprisonment for life in banishment to the Agra jail, which was enhanced on the 21st May 1846 to transportation for attempting to strangle a fellow-prisoner.	misbehaved.	

number and character of the prisoners; and the magistrate must take such measures as appear necessary for preventing attempts on the part of the prisoners to over-power their guard, without subjecting the prisoners to more restraint than is requisite for their safe custody. C. O. No. 161 of vol. 1.

2951. The rules quoted in paragraph 2634 are applicable to prisoners under removal. For an account of a lamentable accident which occurred for want of due precautions against danger from fire, see C. O. Govt. *Bengal*, No. 247, January 6, 1853.

Precautions
against fire.

2952. Officers are not to forward a prisoner charged with a heinous offence from one station to another under such inadequate custody as the charge of a single burkundaz. The crime of which a prisoner under such despatch is accused should also be invariably written in the purwana meant to accompany the despatch. C. O. No. 120 of vol. 3.

Single
daz not a sufficient
guard.

2953. It having recently come to the knowledge of the government that prisoners transmitted from one jail to another are occasionally subjected to unnecessary suffering, the following instructions were laid down for their safe custody and health in transit. *Rule 1.* Every prisoner before being sent on a march, must be supplied with a blanket, a suit of jail clothing, and such drinking and cooking vessels as are necessary. *Rule 2.* No fetters, bonds, or ligatures, other than are absolutely necessary to prevent escape, should be employed; and immediately that convicts are again safely lodged in jail, all hand chains should be removed. *Rule 3.* While on the march hand-chains may be used; and, if there is an armed guard sufficient to prevent any forcible attempt to escape, it would be better simply to couple prisoners together, than to fasten them all to a single chain at night, a proceeding which ought never to be necessary. *Rule 4.* Aged and sick prisoners should not be transferred at unhealthy seasons. In the event of its being absolutely necessary, suitable means must be provided to carry those who are unable to walk, and to take care that the carriage so provided is not made use of by the guards. Natives generally are so indifferent to sickness and suffering that do not affect themselves, and have so little sympathy with the afflictions of others, as to render it necessary to adopt the most stringent measures to prevent any abuse of the means provided for the relief of those who really require such aid. *Rule 5.* In every pal or hut in which prisoners on the line of march are confined at night, a closed lantern should be suspended. *Rule 6.* Sick prisoners must always travel separately, and are not to be attached to any other convicts while they remain sick. *Rule 7.* In all practicable cases water is to be preferred to land carriage. *Rule 8.* All particulars connected with the safe custody and health of prisoners in transit must be entered by the despatching officer in a certificate to be given to the head man of the guard escorting them. This certificate must be countersigned by every magistrate and deputy magistrate through whose station the prisoners pass *en route*, and should eventually be returned to the despatching officer, with the signature of the magistrate to whose jail the prisoners have been consigned. C. O. Insp. Jails *L. P.* No. 45, May 19, 1856.

Treatment of pri-
soners in transit.

2954. An instance having recently occurred of a file being discovered on the person of a convict, who had been transferred to another jail; and it being evident that this implement for attempting to escape had been procured during the journey; it is directed that, whenever

Prisoners to be

convicts are forwarded from a jail to any other district, the officer in charge of the escort is to be held individually responsible for the rigid search of the persons and clothes of the prisoners at the end of every day's march. The greater facilities, which a journey affords for obtaining possession of prohibited articles, demand increased vigilance from the guard, any dereliction of duty on whose part should be severely punished. C. O. Insp. Prisons *W. P.* No. 48 of 1854.

Penal settlements.

2955. All convicts sentenced to transportation are to be sent to such of the British settlements of Asia, the island of Mauritius, or its immediate dependencies, as government appoints; and are also liable to be employed at any places within the limits of the settlement, to which they are sent, which are from time to time fixed by the local administration. A power is further vested in government of transferring convicts from one place to another in such settlements; and such transfer is authorized as often as it is found requisite. Previously to ordering such transfers, the governor general in council is to consult the local administration upon the propriety of allowing any convicts to be exempted from removal, whose good conduct has merited this indulgence, or who, from sickness and infirmity, are not fit objects to be removed. Reg. IX. 1813, sect. 2, cl. 3. Reg. XIV. 1816, sect. 15.

**Prisoners sent
jail may
be trans-
ported.**

2956. Whenever any convict, sentenced to imprisonment for life in the Alipore jail, is desirous of obtaining a commutation of his sentence to transportation for life, he is to make known his wishes to that effect, either verbally or in writing, to the superintendent or other officer in charge of the jail; who is to call such convict before him, and after taking down his request in writing, to be signed by the said convict and attested by two or more respectable persons, is to report the case for the orders of government, stating at the same time any objections which, in his opinion, exist to the commutation of the sentence, on account of the dangerous character of the convict, or other circumstances. Reg. I. 1828, sect. 2, cl. 1.

Government may

2957. It is competent to the governor general in council, on consideration of such report, to commute the sentence passed upon the convict of imprisonment for life in the Alipore jail to transportation for life to any of the British settlements in Asia, and the sentence so commuted is to be carried into effect in the same manner as sentences of transportation beyond sea for life are enforced. Reg. I. 1828, sect. 2, cl. 2.

**Punishment for
return from trans-
portation in such
case.**

2958. The provisions contained in sect. 5, Reg. XII. 1818(a) are hereby declared applicable to convicts, whose sentences are commuted under the foregoing clause, and who escape from the place of their transportation, and return without permission to any part of the Company's territories. Reg. I. 1828, sect. 2, cl. 3.

(a) This is evidently an error,—for the section cited allows only extra imprisonment (with stripes) for two years, which must be inoperative in cases of prisoners sentenced to imprisonment for life. Probably cl. 2, sect. 9, Reg. LIII. 1808 is intended, which allows sentence of death.

SECTION XIII.

OF RELEASE OF PRISONERS.

2959. All orders for receiving prisoners into jail, and for their final discharge, are to be signed by the magistrate or his assistant, and addressed to the jailor. Jail rules, sect. 10, para. 1. **Mode of.**
Orders for discharge.

2960. When the sentence of any prisoner may expire, the jailor is to produce him together with his warrant, and registers of admission and release. The releasing officer will sign the order for release on the back of the warrant, and affix his initials and the date in each register. C. O. Insp. Prisons *W. P.* No. 3, August 28, 1845. **Rules for**
of pris-
piry of

2961. No prisoner is to be released on any occasion during the night; and all prisoners ordered to be discharged are to be brought to the magistrate's cutcherry, and to receive their discharge in the presence of the magistrate or his assistant. Jail rules, sect. 10, para. 2. **Hour and place**
of release.

2962. When a convict sentenced to temporary imprisonment is in confinement, at the approach of the period fixed for his discharge, in a jurisdiction different from that in which he was committed for trial, he is to be sent back (with the warrant containing his sentence, or an authenticated copy of it, if the warrant includes other convicts not sent at the same time) to the magistrate of the jurisdiction in which he was committed for trial; unless the magistrate having charge of the convict, on information of his intended place of residence, or for any other special reason, judges it proper to discharge him in his own jurisdiction, or to send him for discharge to the magistrate of a different jurisdiction, in which last case he is to be sent to the magistrate of such jurisdiction; and the magistrate to whom the convict is sent in such cases, is to carry into effect the warrant for his discharge, taking bail or not, as therein directed; or in particular cases requiring bail, though not directed in the warrant, if, from any information before him of the prisoner's dangerous character, it appears indispensably necessary to adopt this precaution. Provided that in all such cases the prisoner, with a full report of the magistrate's information respecting him, is to be brought before the session judge for his orders.—The magistrate having charge of convicts to be discharged in another jurisdiction under this rule, is to send them in such custody as appears sufficient, and with or without fetters, or with an iron on one leg only, as he deems proper, to the magistrate by whom they are to be discharged, so as to reach him before the expiration of their respective sentences: and, whenever a convict has been committed for trial in a jurisdiction different from that to which he is sent for the purpose of being discharged, or has resided before he was apprehended in a different district from that in which he was committed, and also from that in which he is sent for discharge, notice is at the same time to be given to the magistrate both of the jurisdiction in which he was committed for trial, and of that in which he formerly resided: and such magistrates and the police officers, being duly advised of their release, are to take the requisite precautions to watch the conduct of the persons discharged, especially of such as appear to be of a dangerous character, and to guard against the repetition of criminal offences by

them. The magistrate sending convicts from one station to another under these instructions, is to furnish them with a sufficient allowance for their subsistence on the way; but the allowance for one month's maintenance, to which convicts are entitled under sect. 25, Reg. IX. 1793 [see below], is to be paid to them by the magistrate who discharges them; and he is required to be particularly careful that such allowance is, in all instances, received without deduction by the person entitled thereto. C. O. No. 66 of vol. 1.

Prisoners discharged to be furnished with certificate;

2963. All prisoners discharged by the magistrate or his assistant are to be furnished with a certificate or roobakaree, under his official seal and signature, specifying the following particulars, *viz.* on what ground or charge the prisoner was apprehended, and at what period; the result of any enquiry made respecting the prisoner; and, if brought to trial on any specific charge, the result of such trial, and the sentence passed upon him, together with the execution of the sentence, if he has been convicted and punished; the order of the prisoner's discharge, by whom passed, and on what date; and, if security has been given by the prisoner for his future appearance or good behaviour, the names of the sureties, and amount in which they were bound respectively. C. O. No. 116 of vol. 1.

and a pass;

and with his own or other clothes.

2964. If necessary, a pass should be given to a prisoner on his release, to prevent his being apprehended as a runaway convict. On leaving the jail, each prisoner is to be supplied with the clothing that was taken from him on admission; or with some plain and unmarked suit of common cloth, old or new, as may be available, taking care that he has no article of clothing about him marked or numbered as a prison suit. C. O. Insp. Prisons W. P. No. 25, April 1, 1851.

Means of preparing certificate.

2965. Magistrates are furnished with copies of the futwas of law officers in all cases of sentences passed by the sessions court and the nizamat adawlut, expressly to enable them to prepare this certificate. C. O. No. 185 of vol. 1.

Subsistence money to be given to discharged prisoners.

2966. The magistrate is to pay to all persons released from jail, after an imprisonment of six months or upwards calculating from the date of their sentence, who appear to be in actual need of such assistance, a sum sufficient to maintain them for one month. The sum to be paid to each individual is to be regulated by his situation in life, but is in no case to exceed five rupees; and in every instance is to be confined as much within that amount as may be consistent with the purpose for which the allowance is granted. *Beng. Reg. IX. 1793, sect. 25. Ced. Prov. Reg. VI. 1803, sect. 25.*

2967. Diet money should be given to every released prisoner at the rate of 6 pie per day for the number of days that will enable him to reach his home. C. O. Insp. Prisons W. P. No. 25, April 1, 1851.

For reward.

Magistrate may report for remission of sentence deserving of reward.

2968. If any convict, under sentence of imprisonment, from his uniform good behaviour, and industrious performance of the work assigned to him, or from his meritorious conduct in preventing the escape of other prisoners, or rendering any other public service, appears to the magistrate having charge of him to deserve a remission of the further punishment to which he is liable under his sentence, or of any part of it; a report of the circumstances of the case, with a copy of the sentence passed upon the prisoner, is to be transmitted by the magistrate through the session judge to the government,

who is empowered to remit the further punishment adjudged against the prisoner, in whole or in part, if there appears to be sufficient cause for it. Reg. XIV. 1816, sect. 10, cl. 1. C. O. Govt. *Bengal*, No. 1072, October 10, 1844, para. 7.

2969. A full report of the circumstances of the case is to be sent, so as to enable the government to form a judgment upon the propriety of granting the remission of punishment which is proposed. C. O. No. 98 of vol. 1.

2970. In cases of short imprisonment adjudged by the magistrate or his assistant, wherein the object would be defeated by the delay attending a reference to government as directed above, the magistrate is empowered to order the discharge of a prisoner, who appears to deserve a remission of punishment on the grounds specified; provided that his reasons for every such order are recorded on his proceedings, to be submitted, when required, for the information of the session judge. Reg. XIV. 1816, sect. 10, cl. 2.

Magistrate may himself order discharge in certain cases.

2971. Applications for the release of prisoners on account of good conduct, or any other cause than bodily infirmity, are to be made through the inspector of prisons (or, where his authority does not extend, through the controlling authority), and the nizamat adawlut, to the government, with whom alone rests the power to order release in such cases. Notification Govt. *W. P.* No. 3200, June 6, 1848.

2972. In all cases when great and mortal sickness prevails in a jail, or when from causes incidental to the place short-term prisoners are liable to fall victims to any disease under which they are laboring, and which has been contracted in their place of imprisonment, magistrates are vested with a discretionary power of release, without reference to higher authority. In every instance in which such discretionary power is exercised, it must be based on a certificate from the officer in charge of the medical duties of the jail, stating briefly the nature of the disease from which the prisoner is suffering, and his belief that there is no reasonable chance of recovery in the prison, or that the said prisoner will certainly die if he remain in confinement. Or, in the event of the occurrence of severe and fatal epidemic disease to which all the inmates of the jail are alike exposed, and from which all are equally liable to suffer, the same discretionary power may be exercised by magistrates towards short-term prisoners whose period of sentence has nearly expired, and who are not actually labouring under disease, upon the written representation of the medical officer that the lives of such prisoners are in imminent hazard from their remaining in the jail. Every instance in which the discretionary power above mentioned is exercised by a magistrate, must be immediately reported to the inspector of jails in the form annexed,(a) and the

For infirmity.

Rules L. P. for release of short-term prisoners, when in danger of death ;

or in cases of severe and fatal epidemics.

(a) *Statement of short-term prisoners released under the operation of C. O. No. 65, dated 2nd April 1857, from the jail of*

[illegible]

cause and date of the release must be carefully entered in the prison register, and attested by the signature of the magistrate. The object of this order is that a short sentence for a simple misdemeanor, or for any crime which does not bear the stamp of such moral turpitude as to justify the risk of forfeiture of life from accidental causes incidental to imprisonment, may not be liable to become in any circumstances a sentence of death. While, therefore, the interests of humanity require the prompt exercise of the discretionary power now vested in magistrates in all cases of the nature indicated, the equally powerful claims of justice demand that that power shall only be employed when absolutely and urgently required. C. O. Insp. Jails *L. P.* No. 65, April 2, 1857.

In cases of extreme sickness magistrate may remove.

Report may be made for release of blind or decrepid prisoner.

2973. Officers in charge of jails are authorized to transfer sick prisoners in extreme cases from one jail to another on their own responsibility, reporting the circumstances to government as soon as possible. C. O. Govt. *Bengal*, No. 1030, June 9, 1847.

2974. When a prisoner is suffering under blindness or decrepitude, or other incurable infirmity, such as to incapacitate him, if released, from the further commission of crime, and the release of whom therefore would not be attended with mischief or danger, a report is to be submitted in the *Lower* provinces to government by the magistrate through the session judge, with the sentiments of the latter, as to the propriety or otherwise of the clemency of government being extended to such person. C. O. No. 52 of vol. 2. C. O. Govt. *Bengal* No. 1072, October 10, 1844.

Form of such application.

2975. Such applications are to be made in the form given above. In col. 10 of this statement, the civil surgeon is to give his opinion in the form of a declaration: the magistrate is to fill up col. 11 with his opinion and such observations as the case appears to call for, particularly as regards the general conduct and character of the prisoner, and to forward the statement to the session judge; who, provided he agrees with the magistrate and surgeon, is to enter his opinion and remarks (in a column to be added for that purpose) and to submit the original statement for the consideration and orders of the court, retaining a copy of it for record in his own office. The magistrate is also to send with the application a copy of the warrant under which the prisoner is confined. C. O. No. 218 of vol. 2. C. O. No. 9 of vol. 3. *W. P.*

Opinion of surgeon required in cases of blindness.

2976. Officers in charge of jails are warned of the practice prevalent among convicts, with a view to obtain their liberation from jail, of causing temporary, and possibly permanent, loss of vision by applying lime and other injurious substances to their eyes. In applications for the release of prisoners afflicted with blindness, the surgeon is to record his opinion as to the origin of the calamity, and to state distinctly whether, from the appearance and nature of the malady, there is any reason to suspect that it has been designedly produced, or is purely the result of misfortune. C. O. Nos. 219 *W. P.* and 220 *L. P.* of vol. 3.

Power of release in *W. P.* vested in nizamut adawlut in certain cases.

2977. Act XVIII. 1844 does not interfere with the privilege heretofore exercised by the nizamut adawlut, under express instructions from the local government, of releasing blind and infirm prisoners within certain specified limits. C. O. No. 190 of vol. 3. *W. P.*

Applications in *W. P.* for release for infirmity to be made through inspector.

2978. All applications for the release of blind or infirm prisoners, from jails under the control of the inspector of prisons, are to be made to him by magistrates or other local officers in charge. The inspector is authorized to release all prisoners whose sentence of

imprisonment does not exceed 3 years, and whose bodily infirmity has been certified. He is to forward to the nizamut adawlut applications for the release of blind and infirm prisoners, whose sentence exceeds 3 years; but he is allowed to reject altogether such as may appear unworthy of consideration, or open to rejection, by reason either of the enormity of the convict's crime, the turbulence of his character, or other cause. The nizamut adawlut is to issue final orders regarding all blind and infirm prisoners, whose sentence does not exceed 5 years; and is to forward to government cases in which such prisoners, though sentenced to periods of imprisonment beyond 5 years, are deemed proper objects of mercy. From districts which are under the court, but not under the inspector of prisons, applications are in all cases to be submitted through the session judge, or other controlling authority, direct to the nizamut adawlut. Notification Govt. *W. P.* No. 3200, June 6, 1848.

Inspector may

Other reported mont.

If district is not under inspector.

2979. Neither blindness, nor any other physical infirmity can entitle to the indulgence of release, before the expiration of the full term of his sentence, a prisoner convicted of murder, wounding with intent to murder, dacoity, highway robbery, burglary, theft, cattle stealing, child stealing, knowingly receiving stolen or plundered property, arson, rape, or perjury. Blindness, or loss of the use of any of the limbs, or other incurable disease, will ordinarily entitle prisoners to their release,—1. if they have not been convicted of any of the above mentioned crimes;—2. if they have never been guilty of unruly conduct, or other gross breach of prison rules, during the time they have been in confinement;—3. if the infirmity which forms the ground of application for release has not in any way been produced or aggravated by any wilful act on the part of the prisoner. *C. O. Insp. Prisons W. P.* No. 31, June 21, 1852.

Rules under which such applications are to be considered.

2980. A session judge is not competent to authorize the release from confinement of any convict under sentence of imprisonment, on security or otherwise, without the previous sanction of the nizamut adawlut [or government];* but whenever the bodily health of a prisoner is such as, in the opinion of the civil surgeon, to render his temporary removal from the jail or hospital absolutely necessary, either for his own recovery, or if the disorder be of a contagious nature for the safety of other prisoners, or for any other good and sufficient cause, and the emergency of the case does not admit of a previous reference to government, the proper course is to authorize and direct the magistrate to remove him to any suitable building, or to a neighbouring jail, and to report the circumstances without delay to the court. *Const.* No. 1016.

Session judge cannot release on account of ill health, but may authorize removal;

* Except in *W. P.* as above.

2981. A session judge is not competent to authorize the release from confinement, on security or otherwise, of any convict under sentence, for the purpose of apprehending offenders. *Const.* No. 1013.

nor for the of apprehend other offences

2982. Except under the preceding rules, a magistrate is not competent to release prisoners before the expiration of their sentences, on account of their state of health, without the authority of government. *Const.* No. 841.

Magistrate cannot release prisoners on account of ill health, except under these rules.

2983. The permission of the government should be obtained for the removal to the insane hospital of a prisoner who has become insane while under sentence. *N. A. R.* vol. 6, page 80.

Removal to the insane hospital of a prisoner under sentence.

SECTION XIV.

OF SECURITY PRISONERS.

Cannot exempt
themselves from
labor.

2984. Security prisoners cannot be exempted from labor by the payment of a fine. Const. No. 881.

To be employed
in the district on
public works.

2985. In conformity with the spirit of sect. 10, Reg. XXII. 1793 (*Ced. Prov.* sect. 10, Reg. XXXII. 1803) the magistrate is at liberty to employ prisoners, confined till they furnish security for their future good behaviour, on works of a public nature. He must, however, be careful not to employ them at any great distance from the sudder station, where they might be subject to difficulty in procuring sureties, and is on no occasion to send them beyond the boundaries of his district. C. O. No. 72 of vol. 1. Const. No. 160.

Distinction to be
made in regard to
labor.

2986. Persons in confinement under requisition of security, in pursuance of sect. 9, Reg. VIII. 1818, as of dangerous and irreclaimable character for theft or robbery, should be subjected, as hitherto, to public labor; but all others detained for security as vagrants or otherwise, should be subjected only to private labor. C. O. No. 238 of vol. 1.

To be separated
from other prison-
ers, and confined
without fetters.

2987. All prisoners detained in custody for security only, more especially such as are not confined as notorious dacoits or other robbers of dangerous character, are to be kept distinct, as far as possible from prisoners convicted of specific offences; and are to be confined without fetters, except when the magistrate may judge the use of them requisite to prevent the escape of particular prisoners; and in such case the magistrate is to issue a written order for that purpose to the jailor. C. O. No. 116 of vol. 1.

Not to be remov-
ed to another zillah
without sanction of
government;

2988. No prisoner detained under requisition of security in the zillah, in which he has been accustomed to reside, or in which he has been apprehended, is to be removed to the jail of a different zillah, unless the government sanctions the removal, in compliance with the prisoner's own request, and with a view to enable him the more easily to furnish the security required. Reg. VIII. 1818, sect. 6, cl. 1. Reg. IV. 1825, sect. 3.

even to act as ap-
provers;

2989. The removal of prisoners confined in a criminal jail on a requisition of security for good conduct to another district, for the purpose of being induced to give evidence as approvers before the officers appointed for the suppression of dacoity, is illegal. But if such prisoners have no objection to be removed to the jail of another district for the sake of giving evidence, government may sanction their removal. Const. No. 1240.

except in emer-
gent cases.

2990. The foregoing rule, however, is not to be construed to preclude the removal of such prisoners from one station to another, in cases in which a due regard to the health of the prisoners, or to their safe custody, or other emergent circumstances, may in the judgment of the government, render that measure necessary or advisable. Reg. VIII. 1818, sect. 6, cl. 2. Reg. IV. 1825, sect. 3.

(a) For rules regarding the confining and release of security prisoners, see sect. 2, chap. 1, book 5, "of security for good behaviour."

SECTION XV.

OF THE CIVIL JAIL.

2991. The control of the civil jail is vested in the magistrate: he is to visit the civil jail once in every week; and to redress all well-founded complaints of ill-treatment which are preferred to him by the prisoners against the jailor, or other person having charge of them. He is also to be attentive at all times to the health and cleanliness of the prisoners, and to be careful that the surgeon attends and administers to the sick in the civil jail, in like manner as he is required to attend the criminal jail. Reg. III. 1826, sect. 2.

Control is vested in magistrate:

2992. As the magistrate is responsible for the safe custody of the dewanny as well as the foudareo prisoners, the appointment and removal of native officers, attached to both jails, are vested exclusively in him. Const. No. 442.

and appointment of native officers.

2993. The session judges, who are directed to visit the criminal jails and to issue to the magistrates such orders as appear to them advisable for the better treatment and accommodation of the prisoners, are likewise to visit the civil jails; and are empowered to issue such instructions, being consistent with the general regulations, as appear requisite for the better treatment and accommodation of the prisoners in the jails, or for inquiring into, and redressing, if established, any alleged grievance or undue restraint during their imprisonment. Reg. IV. 1816, sect. 4.

Judge to visit, and to issue the necessary instructions.

2994. The judge has no right to be considered as the medium of communication on the part of the magistrate with the civil prisoners; nor can the magistrate constitute his office the channel of communication between the judge or collector and any prisoner confined under civil process. Const. No. 1021.

Communication of prisoners with the magistrate, and judge, or collector.

2995. As collectors are empowered by sect. 20, Reg. VIII. 1831 to execute their own awards, their orders for the confinement and release of defaulters need not pass through the civil judge; and the warrant of a collector is sufficient authority to the civil jailor to receive or discharge a prisoner. C. O. No. 131 of vol. 2.

Collector empowered to imprison in civil jail, or to discharge.

2996. The native judges, holding their courts within the jurisdiction of a joint magistrate residing at any place other than the sudder station of the zillah court, on forwarding any prisoners to the joint magistrate for confinement in the civil jail, are, at the same time to report the circumstances to the judge, who is to confirm or cancel the order as appears just and proper. C. O. No. 143 of vol. 2.

Native judges at subordinate stations.

2997. It is not competent to a judge to release a civil prisoner solely on the ground of illness, without the consent of the party at whose instance he was confined. Const. No. 1114.

Judge cannot release on account of illness.

2998. The magistrate is vested with authority to punish, on a summary inquiry, the offences specified in the following section of this regulation. Reg. III. 1826, sect. 3.

The magistrate may punish prisoners for offences.

behaviour towards
the jail officers ;

2999. Refractory behaviour by any prisoner confined under process of the civil court, such as resistance to the jailor, guards, or other public officers in the regular discharge of their public functions ; abusive language to any such officers, and generally any culpable behaviour towards them, which does not involve a serious act of criminality, such as cannot be duly punished by the magistrate, and should therefore be brought before the sessions court. Reg. III. 1826, sect. 4, cl. 1.

disorderly con-
duct, attempt to
escape, &c.

3000. Any other instance of disorderly conduct by a prisoner, such as riot, attempt to escape, conspiracy with other prisoners with a view to escape, or for the purpose of insurrection, or for any other unlawful or prohibited purpose, abusing or assaulting another prisoner, and generally any misconduct committed by a prisoner whilst in custody, which, under the regulations in force, or from its aggravated nature, does not exceed the competency of the magistrate, and therefore is more properly cognizable by the sessions court. Reg. III. 1826, sect. 4, cl. 2.

Escape involves
attempt to escape.

3001. A person sentenced to imprisonment in the civil jail by the collector in a case of illicit opium, effected his escape, but was re-apprehended. Held, that as every escape must involve an attempt to escape, he should be dealt with agreeably to the above provisions. Const. No. 486.

Power of magis-
trate to punish such
offences ;

3002. The powers vested in the magistrate for the punishment of the offences specified in the preceding section, which on a summary inquiry appear to have been committed by any of the prisoners confined under civil process, are declared to be as follows, due regard being had to the nature of the offence, the condition of the prisoners, and every other just consideration applicable to the case. Reg. III. 1826, sect. 5, cl. 1.

nature of punish-
ment.

3003. The offences specified in the preceding section are punishable by close confinement, or by a reduction of the prisoner's allowance for any term not exceeding two months ; the allowance to be in no case reduced below what is consistent with the prisoner's support ; and the difference between the prisoner's full allowance, and the reduced rate, to be carried to the credit of the government as a fine. Reg III. 1826, sect. 5, cl. 2.

Magistrate can-
not detain a person
entitled to release
from civil process.

3004. If a civil prisoner, sentenced to a reduction of his allowance for breach of prison rules, satisfies his creditor with a view to obtain his release, the magistrate cannot commute the punishment so awarded to fine and imprisonment ; but the prisoner, on payment of the demand against him, must be immediately released. Const. No. 426.

of proce-
such cases.
* v. para. 2787.

3005. The rule for conducting such summary inquiries, and recording such sentences, and for their inspection by the session judge, is the same as that prescribed with regard to prisoners confined in the criminal jails by sect. 8, Reg. XIV. 1816.* Reg. III. 1826, sect. 5, cl. 3.

Limitation of
of magis-
over civil pri-

3006. Provided, however, that nothing in this regulation is construed to give the magistrate any jurisdiction whatever over the question of a civil prisoner's liability to confinement, or title to release, with reference to the civil process under which he has been sent to jail ; or to preclude the judge of the civil court, or his ministerial officers, European

or native, authorized or deputed by him, from visiting the civil jail; or the judge from summoning any civil prisoner to his court upon matters connected with the civil process under which he is confined, or for other judicial purpose. Reg. III. 1826, sect. 6.

3007. A civil prisoner cannot be confined in fetters, unless he is suffering under a criminal sentence for having broken jail; in other words, fetters cannot be imposed on a civil prisoner merely to ensure his safe detention in jail. Const. No. 624.

Prisoner not to be confined in fetters to ensure custody.

3008. A brief explanation is to be given of the cause of detention, when any prisoner has been confined in the civil jail for one year. The magistrate having the mere custody of the prisoner cannot give this information, which must be sought from the civil judge or collector under whose order the prisoner is confined: when, therefore, the statement regarding the civil jail is prepared, the magistrate is to forward it to those officers, that they may insert on the back of it the required explanation. C. O. No. 139 of vol. 2.

Explanation to be given of prisoners confined for one year.

SECTION XVI.

OF STATE PRISONERS.

3009. When the reasons stated in the preamble of this regulation(a) seem to require that an individual should be placed under personal restraint, without any immediate view to ulterior proceedings of a judicial nature, a warrant of commitment under the authority of the governor general in council, and under the hand of the secretary to government, is to be issued to the officer in whose custody such person is to be placed. Reg. III. 1818, sect. 2, cl. 1.

By what authority state prisoners are to be confined.

3010. The warrant of commitment is to be in the following form:—
To the (*here insert the officer's designation*).

Form of warrant to be issued.

Whereas the governor general in council, for good and sufficient reasons, has seen fit to determine that (*here insert the prisoner's name*) shall be placed under personal restraint at

(a) The preamble of the regulation is as follows:—"Whereas reasons of state embracing the due maintenance of the alliances formed by the British government with foreign powers, the preservation of tranquillity in the territories of native princes entitled to its protection, and the security of the British dominions from foreign hostility and from internal commotion, occasionally render it necessary to place under personal restraint individuals, against whom there may not be sufficient ground to institute any judicial proceedings, or when such proceeding may not be adapted to the nature of the case, or may for other reasons be unadvisable or improper; and whereas it is fit that, in every case of the nature herein referred to, the determination to be taken should proceed immediately from the authority of the governor general in council; and whereas the ends of justice require that, when it may be determined that any person shall be placed under personal restraint, otherwise than in pursuance of some judicial proceeding, the grounds of such determination should, from time to time, come under revision; and that the person affected thereby should at all times be allowed freely to bring to the notice of the governor general in council all circumstances relating, either to the supposed grounds of such determination, or to the manner in which it may be executed; and whereas the ends of justice also require, that due attention be paid to the health of every state prisoner confined under this regulation, and that suitable provision be made for his support, according to his rank in life, and to his own wants, and those of his family; &c."

(*here insert the name of the place*), you are hereby required and commanded, in pursuance of that determination, to receive the person above named into your custody, and to deal with him in conformity to the orders of the governor general in council, and the provisions of Reg. III. 1818.

Fort William, the ———

By order of the governor general in council,

A. B.

Reg. III. 1818, sect. 2, cl. 2.

Secretary to Government.

Such warrant
sufficient authority
for detention of
prisoner;

3011. Such warrant of commitment is to be sufficient authority for the detention of any state prisoner in any fortress, jail, or other place within the territories subject to the presidency. Reg. III. 1818, sect. 2, cl. 3.

whether within
the jurisdiction of
supreme court or
not.

3012. The warrant of commitment of any state prisoner under Reg. III. 1818 may be directed to the sheriff of the jail of any of the supreme courts of judicature established by royal charter in the territories under the government of the East India Company, or to the commandant of any fortress, or to the officer in charge of any jail or other place, in which it is deemed expedient that such state prisoner be confined, in any part of the said territories; and such warrant is to be sufficient authority for the detention of such state prisoner in the fortress, jail, or other place mentioned in the warrant. Act XXXIV. 1850, sect. 1.

Reg. III. 1818
extended to su-
preme court juris-
diction.

3013. Reg. III. 1818 is extended and applied to every sheriff, commandant, or officer having any state prisoner in custody, under the said regulation, as explained and extended by this Act. Act XXXIV. 1850, sect. 2.

Former warrants
made legal.

3014. Any state prisoner now confined under any such warrant within the jurisdiction of any of the said supreme courts, under the warrant of the governor general in council, is to be deemed to have been lawfully committed thereunto. Act XXXIV. 1850, sect. 3.

Officer in charge
of such prisoner to
make periodical
reports to govern-
ment.

3015. Every officer, in whose custody any state prisoner is placed, is on the first of January and first of July of each year, to submit a report to the governor general in council, through the secretary to government in the political department, on the conduct, the health, and the comfort of such state prisoner, in order that the governor general in council may determine whether the orders for his detention shall continue in force or be modified. Reg. III. 1818, sect. 3.

Magistrate, the session
judge is to visit
him;

3016. When any state prisoner is in the custody of a magistrate, the session judge is to visit such state prisoner, and to issue any orders concerning his treatment, which appear advisable, provided they are not inconsistent with the orders of the governor general in council issued on that head. Reg. III. 1818, sect. 4, cl. 1.

and to make peri-
odical reports.

3017. The session judge is to report to government half-yearly on the situation of prisoners confined in the jail, or otherwise in restraint, under the direct orders of government; noticing at the same time whether they are charged with crimes against the state, or confined on any other ground. C. O. No. 48 of vol. 1; and No. 7 of vol. 3, para. 1.

If prisoner is in
custody of any
other officer, the

3018. When any state prisoner is placed in the custody of any public officer not being a magistrate, the governor general in council is to instruct either the magistrate, or the session

, or any other public officer, not being the person in whose custody the prisoner is placed, to visit such prisoner at stated periods, and to submit a report to government regarding his health and treatment. Reg. III. 1818, sect. 4, cl. 2.

government is to instruct some officer to visit him, and to make reports.

3019. The officer, in whose custody any state prisoner is placed, is to forward, with such observations as appear necessary, every representation which such state prisoner may from time to time be desirous of submitting to the governor general in council. Reg. III. 1818, sect. 5.

Representations of such prisoner to be forwarded.

3020. Every officer, in whose custody any state prisoner is placed, is to report to the governor general in council, as soon after taking such prisoner into his custody as is practicable, whether the degree of confinement to which he is subjected appears liable to injure his health; and whether the allowance fixed for his support is adequate to the supply of his own wants and those of his family, according to their rank in life. Reg. III. 1818, sect. 6.

Early report to

prisoner

3021. Every officer in whose custody any state prisoner is placed is to take care, that the allowance fixed for the support of such prisoner is duly appropriated to that object. Reg. III. 1818, sect. 7.

The allowance of such duly

SECTION XVII.

OF NATIVE INSANE HOSPITALS.

3022. The immediate charge of these establishments, at Dacca, Moorshedabad, Patna, Benares, Bareilly, and Delhi, are placed, as far as regards the medical and moral management of the patients, under the surgeons respectively of those cities; and that of the suburbs of Calcutta under the surgeon attached to the 24-pergunnahs. I. H. Rules, No. 1.(a)

Medical and mo

3023. The superintendence of each hospital as to its general condition and management, and to the care bestowed upon the patients, is vested in the magistrate of the station. It is his especial duty frequently to visit the hospital lying within his jurisdiction. During these visits he is to observe particularly upon the state of the hospital, as to the due ventilation, cleanliness, and general good condition of its wards, and to the easy, contented and comfortable circumstances of the patients. He is likewise to listen attentively to any complaints, which the patients wish to make on the subject of their detention; on their general treatment, or on any supposed inattention or ill usage on the part of the medical officer, or those in authority under him;—and when any grievances or mismanagement seem to exist, he is immediately to take measures, in communication with the surgeon, for their redress; and is at all times to offer such hints for the direction and guidance of the latter as may seem requisite. I. H. Rules, No. 2.

and general

to listen to
plaints of p
and to
to redress them;

3024. Once a quarter the magistrates are to report to the session judge upon the condition of the hospitals under their control, and on the state of the patients as to medical treatment and general comfort. They are to include in their report such observations as

to make quarter-

(a) These insane hospital rules were circulated by the nizamut adawlat with C. O. No. 69, of vol. 8.

and to notice any instances of misconduct on the part of the medical officer.

they have to offer on the conduct of the surgeons in charge, in so far as relates to their sedulous discharge of the daily duties of the hospitals, and to the care, humanity, and success with which they appear to treat the unfortunate persons entrusted to their management. It is also the duty of the magistrates to bring to the notice of government through the session judge any instances of neglect or misconduct on the part of medical officers, or of marked disregard of the directions they have deemed it necessary to give on points connected with the internal regulation of the hospitals, or the management of their patients. I. H. Rules, No. 3.

Duty of session judge.

3025. The hospital is to be frequently visited by the session judge, who is to consider himself empowered to visit the various wards, to enquire minutely into the situation and particular cases of the patients, and to suggest to the magistrate such alterations as may appear advisable, in order to the better regulation of the establishment. He is likewise, whilst making his periodical reports to the government, to take occasion to remark on the state of the hospital inspected by him, and on its degree of fitness for the purposes for which it is intended. I. H. Rules, No. 4; and C. O. No. 279 of vol. 1.

Any difference of session judge.

3026. Should any difference of opinion arise between the magistrate and surgeon on points relating to the general management of the hospital, or to the treatment of any individual patient, the question is to be referred to the session judge; whose duty it is to interpose with his advice and authority, and, where the merits of the case would seem to require it, to submit the circumstance for the orders of government. I. H. Rules, No. 5.

Duties of superintending surgeons:

3027. Superintending surgeons are, during every return of their regular tours of duty, to inspect the hospitals lying within the limits of their superintendence; and at least once every month, when the hospital happens to be situated at the head-quarters of their division: during these visits they are to inspect minutely the condition of the buildings, carefully examine the registers and diaries, and make particular enquiry into the state of each patient. They are to consider themselves bound to look attentively to the conduct of the surgeon, to control his general practice, and in particular cases to modify it in such manner as may be likely to prove beneficial to the patient. In reviewing the state of each hospital in respect of the general management and professional treatment of its inmates, it is their particular duty to see that due attention is paid to the separation, and if practicable, the total disjunction of the male and female branches of the establishment, and to the classification and assimilation of the patients. They are to take care that frequent recourse is had to the cold and hot bath; that unnecessary coercion is never used; that irons are not employed except in extreme cases, and then only manacles or light leg chains; and that, where a preference is given to the strait waistcoat, it is used with discretion, and is neither tied so tight nor kept on so long as to impede respiration, fret and chafe the patient, or prevent him from feeding himself or attending to personal cleanliness. I. H. Rules No. 6.

to see that the male and female patients are separated; that frequent recourse is had to baths; and that patients are not placed under undue restraint;

particularly to the diet and clothing of patients; to the cleanliness of the hospital; and the

3028. The diet and clothing of the patients are to form principal objects of attention to the superintending surgeons, who will not fail to convey their animadversion to the surgeons, and through them to the magistrates, when it appears to them that the supplies in either of these branches are conducted with unnecessary and lavish expenditure on the one

hand or undue and injudicious parsimony on the other. They are to observe that the hospitals are kept clean and comfortable; the wards pure and well ventilated; and the drains and necessaries frequently cleared out and washed; that the keepers and other servants are humane and attentive; and that in the general management and economy of the establishment nothing is wanting to that measure of comfort and happiness which is compatible with the deplorable state of the helpless beings composing it. I. H. Rules, No. 7.

behaviour of the
keepers

3029. The surgeon is regularly to visit the hospital in the morning and evening of each day; and, besides these stated periods, is to give his attendance at all other hours, in which it would seem to be required by any peculiarities in the cases of individual patients; during which visits he is to inspect every division and ward of the hospital, make himself acquainted with the state of all the patients, and issue such directions as may, under the circumstances of the moment, prove necessary. I. H. Rules, No. 14.

The surgeon to
visit the hospital
morning and even-
ing; and to in-
spect the wards

3030. On the 1st of each month, the surgeon is to transmit to the magistrate a return of the patients in the hospital drawn up agreeably to the annexed form. Reports of the same description, but specifying the variety of disease under which each patient labors, are likewise to be forwarded by the surgeon, in the beginning of every month, to the superintending surgeon of the division, for the information of the medical board:—

Surgeons to fur-
nish a monthly re-
turn.

Monthly report of the patients in the Insane Hospital at . . . *for the month of* .

Names.	Age.	Occupation.	Admitted.	Discharged.	Died.	Remarks.

A. B.

Surgeon in charge.

Abstract of patients in the Insane Hospital for the month of

	Remaining.	Admitted.	Total.	Discharged.	Died.	Remaining.	Remarks.
Males, ..							
Females, ..							
Total, ..							

A.

Surgeon in charge.

I. H. Rules, No. 13.

3031. A regular hospital register and medical diary are to be constantly kept by the surgeon, in which he is to enter the name, sex, age, temperament, general constitution, and habits of each patient; the history, kind, and duration of his disease; its treatment and progressive condition: together with dates of admission, discharge, and death. In this journal the peculiar nature and course of the malady of each patient, and its exacerbations and remissions, are to be accurately described, and his general treatment both as to discipline and

Hospital
registers and medical
diaries to be kept
up; and to be open
to inspection by
the magistrate,
judge, and super-
intending surgeon.

medicine fully detailed. Remarks are also from time to time to be entered on the change produced by any modification in the management, or change in the medicines, employed in the several cases. Such alterations as may occur in the bodily health of the patients should likewise be noted; and where the latter suffers much under acute disorder, a daily report of its progressive changes should be entered. These journals are at all times to be kept open for the examination of the magistrate, the session judge, and the superintending surgeon. I. H. Rules, No. 15.

Diet, clothing,
&c. how to be supplied.

3032. The diet, clothing, bedding, cots, cooking and water utensils, and other necessities, excepting wine and European medicines, required for the patients, are to be supplied by native contractors or sircars appointed by, and in every thing subject to, the authority of the magistrates. I. H. Rules, No. 16.

Clothing, bedding,
&c. to be of what description.

A sufficient stock
of every article to
be kept on hand.

3033. The articles of clothing, bedding, &c., used in the hospitals are, as far as possible, to be of the like sort and description, for the male and female patients, as those generally employed by individuals of the same classes and rank under the ordinary circumstances of common life. A sufficient stock of every article is at all times to be kept on hand to allow of frequent change and washing, and to admit of such occasional variations as alterations in the weather, or in the health of patients, may, in the opinion of the surgeon, seem to require. I. H. Rules, No. 17.

When fresh supplies
of clothing, bedding,
cots, &c. are required,
how to be obtained.

3034. When fresh supplies of clothing, bedding, cots, charpoys, or other necessities, are needed, an indent stating the number and description of each article is to be prepared by the surgeon and submitted to the magistrate, who, on approval, will sanction it and give orders for its being complied with. Upon the articles being delivered to the hospital, a receipt signed by the surgeon is to be granted to the person immediately employed in furnishing them. I. H. Rules, No. 18.

Diet how to be
provided.

3035. The diet of the patients is to be provided in the same manner; and a list specifying the several articles and respective quantities of food required is to be daily made under the inspection of the surgeon, and given to the native purveyor who is to furnish them accordingly. I. H. Rules, No. 19.

Quality and quantity
of food left to
the discretion of
surgeon.

3036. As it does not seem practicable to lay down any precise rules regarding kinds or qualities of food, which it may be proper to administer to the patients under all possible varieties of circumstances, the regulations of this department must in a great measure be left to the judgment and discretion of the medical officers in charge. It is, however, to be generally understood, that the articles chiefly expended should as nearly as possible approximate to the best sorts of those commonly used by persons of the same classes in health; and that in all such cases proper and humane indulgence should be shown to the peculiar habits and prejudices of individual patients. On occasion of bodily indisposition, the surgeon is always at liberty to vary the diet, and to order such extra articles as are requisite under the particular exigencies of each case. I. H. Rules, No. 20.

Surgeon to sign
vouchers for articles
received.

3037. At the end of every month a general list of all the articles of diet, clothing, bedding, &c. received during the month from the purveyor is to be made out, under the inspection of the surgeon, and signed and given in by him to the magistrate, who is to preserve

it as a voucher, by which the contractor's accounts of daily expenditure may, when presented for payment, be duly checked and authenticated. I. H. Rules, No. 21.

3038. The small quantities of wine, with which it may be considered necessary to supply the patients in cases of disease and debility, are to be Madeira of the description commonly used in the European hospitals under this presidency, and are in like manner to be furnished by the commissariat department upon indents presented by the surgeon, and bearing the counter-signature of the magistrate and superintending surgeon. The quantities used for each patient, and the reasons for administering it, are to be regularly entered in the hospital diary, and a statement of the total expenditure forwarded once every half year to the superintending surgeon. I. H. Rules, No. 22.

Supply of wine.

3039. The European medicines and apothecaries' utensils are to be supplied from the H. C. dispensary and depôts upon indents prepared by the surgeon, according to the customary form, and submitted through the usual channel for the approval of the superintending surgeon or medical board. In the rare instance in which surgical aid becomes necessary, the surgeon is to consider himself at liberty to employ the instruments furnished to him for the general medical duties of the station to which he is attached. I. H. Rules, No. 23.

European medicines and apothecaries' utensils.

3040. The hospitals are to be lighted up at night; and their cells, wards, areas, grounds, and walks kept clean, under the direction and superintendence of the surgeon, whose peculiar duty it is to see that in these, and in all other points connected with the purity, airiness, and neatness of the buildings, the utmost attention is paid to secure the comfort and welfare of the patients. The floors of the wards and verandahs are to be duly swept, washed, and scoured. The walls of each hospital and its various compartments are to undergo a thorough white-washing at least twice a year; and the doors, windows, and other wooden work are to be painted as often as occasion may require. I. H. Rules, Nos. 24 and 25.

Hospitals to be lighted up at night; and the &c. to be kept clean; and the

3041. Long experience in the history and treatment of insanity having shown, that much may be effected towards the recovery of those afflicted by the healthful employment and exercise of the mind, and the careful banishment of its habitual vicious trains of thought, it is expected that the surgeons of these establishments will devote much of their attention to this important branch of curative means; and that, by indulging the unhappy objects placed under their care with innocent games and other harmless means of recreation, they will endeavour to gain their confidence, and to reclaim them to the enjoyment and exercise of reason. The means best fitted for the useful occupation and amusement of the patients as adapted to native habits must be almost entirely left to the good sense and discrimination of the medical officer, who is to consider himself entitled to make such disbursements on this account as may appear necessary and proper. These disbursements are to be made through the medium of the purveyor, and carried to account in the general contingent bill. I. H. Rules, No. 26.

Patients to be indulged with innocent amusements; and surgeon may make the necessary disbursements on this account.

3042. Individuals are to be admitted patients into the insane hospitals upon the recommendation of the magistrate of the station, or of the session judge; and, without an order transmitted from either of those authorities, the medical officers in charge are in no case to receive or confine a person supposed to labor under mental derangement. In the event of a person being sent from any of the neighbouring zillahs, under circumstances justifying his detention.

Rule for admission of natives.

the magistrate or senior civil servant on the spot is to forward with him a certificate of supposed insanity, which, when countersigned by the magistrate of the station, will be the surgeon's warrant for receiving or confining him. Magistrates are also to forward a descriptive roll in duplicate in the annexed form, with the column of remarks filled up by the surgeon of the district in those cases in which the patient has been attended by him :—

Descriptive roll of insanes forwarded to the Insane Hospital of from Zillah

1.	2.	3.	4.	5.	6.	7.	8.
Name of patient.	Names of near relatives or members of his family.	Place of residence, including names of village, pergunnah, and zillah.	Caste, occupation, or trade.	Age.	List of articles as cloths, &c. belonging to the patient and sent with him to the asylum.	Circumstances that led to the patient having been put under restraint and sent for confinement in the asylum.	Remarks. A brief history of the case, the supposed cause of insanity, &c.

* Column 3.

Column 4.

Place of residence, profession, and age.

List of patient's property sent with him to asylum as well as of any sold to meet charges, with amount realized by such sale

In the case of Insane European British subjects, sent under Circular Order, No. 85, dated 30th April 1841, columns 3, 4, 5, and 6 may be compressed into two columns, as shewn in the margin.*

I. H. Rules, No. 10; and C. O. Nos. 82 of vol. 2, and 104 of vol. 3.

Particulars to be
lu-
to

3043. Whenever magistrates have occasion to send a lunatic patient (not being a criminal prisoner) to the medical officer in charge of a lunatic asylum, they should be careful to forward time a descriptive statement in the accompanying form, indicating all such material particulars regarding the patient as may be ascertainable :—

Name.	Caste.	Residence.	Name and residence of father.	Time and place of being taken into custody.		Circumstances under which the lunatic was seized, and is sent to the asylum, with any facts known regarding his previous state of mind and mode of life.
				Date.	Place.	

C. O. Govt. W. P. No. 618, March 13, 1854.

Rule for discharge
of patients,

3044. The surgeon is to consider himself at liberty to discharge patients from the hospital, without reference to the magistrate, only in cases in which he has reason to believe the cure to have been perfectly established, and of the peculiarities of which he has had sufficient

experience to warrant the opinion that a sudden or dangerous relapse is not to be dreaded. In cases of convalescence or of quiet or harmless disease, and generally in those in which, although the recovery is imperfect, the patient may seemingly be set at large without danger to society, the surgeon may, when he sees meet, represent the circumstance to the magistrate, who is to grant a discharge upon receiving due security from the relatives or friends of the insane person for his future peaceable behaviour.(a) I. H. Rules, No. 11.

3045. The magistrate is under no circumstances to consider himself entitled to release a patient without having previously obtained the surgeon's opinion upon the safety of so doing; should any difference of opinion arise between them on questions of this nature they are to refer the point, when practicable, to the superintending surgeon, whose judgment and decision is, unless either party think it right to have recourse to reference to the medical board, to be considered final as to the immediate discharge or further detention of the individual. I. H. Rules, No. 12.

Magistrate never to discharge without the consent of the surgeon.

3046. Attached to every hospital there is to be, upon the monthly salary of sixteen rupees, a native doctor or compounder, who is constantly to reside on the spot and to be immediately subject to the orders of the surgeon. At the head of each establishment is to be a darogah or head native keeper on a monthly salary of ten rupees, who, under the control and direction of the medical officers, is to have the general management of the patients, and to possess authority over the other servants. In the male branch of the hospital there is to be for every thirty patients one naib jemadar or deputy keeper on a salary of five rupees; and for every eight patients a peon, coolie, or nigaban at four rupees; there is to be one mehter on wages of three or four rupees for every twenty patients; and one nai, or barber, at three rupees for every fifty patients. For the women's department there is to be a head female keeper at six rupees per month, one female coolie at four rupees for every eight patients, and one mehtranee for every twenty patients. There are also to be common to both branches of the establishment, a cook at five rupees wages for every forty patients; a bheesty at four rupees for every forty patients; one goala or Hindoo water-carrier at four rupees for carrying water to the cookroom for the use of the Hindoos; and one dhobie at five rupees for every fifty patients; one hurkara at four rupees is to be allowed for carrying messages; and, when the airing grounds are extensive, one or even two gardeners at four rupees each per month. It is conceived, that the foregoing establishment for servants is calculated upon a scale sufficiently liberal to provide, under ordinary circumstances, for the safe custody of the patients and due attendance on their persons; but the magistrate is at liberty, in communication with the surgeon, to augment or diminish it, or to vary its distribution, when such change appears necessary for the benefit of the patients. I. H. Rules, No. 27.

Establishment of servants allowed.

Magistrate in communication with surgeon may augment or di-

3047. The salaries of the native establishment of each hospital are to be fixed by the magistrate; and the whole of the servants of every description maintained in it, are to be mus-

servants.

(a) This rule of course does not apply to the case of persons, who, being charged with the commission of a penal act, have been sent to the insane hospital on proof of insanity, either when apprehended, or at the time of trial; for in such case the accused is to be tried upon his recovery. See paras. 100 et seq.

* Treatment of patients by servants.

tered for inspection at such times as he may choose to direct. Every description of servants attached to the hospital are placed under the control and orders of the medical officers ; and, without instructions from them, are in no case to have recourse to irons, the strait waistcoat, or other severe restraints. It is the surgeon's duty to be careful that the patients are never struck ; that the keepers invariably abstain from all acts of oppression, and unnecessary severity, and under every circumstance behave with mildness, forbearance, and humanity. In instances of gross misconduct, the surgeon is empowered immediately to discharge the offender ; but in ordinary cases he is to represent the circumstances to the magistrate, and obtain his consent, previously to making any change in the state of the establishment. I. H. Rules, No. 28.

Rule for discharge of servants.

Expenses of hospitals how to be charged.

3048. The expenses attending the support of each of the insane hospitals, including the monthly allowances granted to the surgeon, and to the native officers on the establishment, are to be charged in separate monthly contingent bills, to be submitted in the customary manner by the magistrate for audit and for the sanction of government. An annual account of the total charge for each establishment is likewise to be furnished by the magistrate for the information of government ; and all expenses of every description incurred on account of these hospitals are to be charged under the head of charges general in the general department. I. H. Rules, No. 29.

Annual statements to be furnished by the magistrate to government.

3049. The following returns are to be furnished annually to government by the magistrate, viz. a table of the total expenditure in the insane hospital, showing also the ordinary daily allowance for each patient ; a return of the servants attached to the institution ; and a statement of the miscellaneous contingencies incurred.(a)

* *Nominal Return of servants attached to the Institution.*

Number.	Names.	Description.	Rate of pay per mensem.			Amount per annum.		
			Rs.	As.	P.	Rs.	As.	P.

Account of miscellaneous contingencies during the year 185 .

Articles.	Amount.		
	Rs.	As.	P.

(a) I cannot find the order under which these returns are furnished ; but have taken the forms from those actually in use.

